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Case No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1988

DENNIS SOCHOR,

Petitioner,

v.

STATE OF FLORIDA,

Respondent

ON WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

BRIEF ON THE MERITS IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE FLORIDA SUPREME COURT CONDUCTED A PROPER HARMLESS ERROR ANALYSIS IN CONFORMITY WITH BOTH THE UNITED STATES CONSTITUTION AND *CLEMONS v. MISSISSIPPI.*

II. WHETHER THE AGGRAVATING FACTOR OF "ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL" HAS BEEN SUFFICIENTLY DEFINED TO SATISFY THE REQUIREMENTS OF *MAYNARD v. CARTWRIGHT,* 486 U.S. 356 (1988); AND *WALTON v. ARIZONA,* 497 U.S. ____, 111 L.Ed.2d 511 (1990).

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STATEMENT OF THE CASE

Respondent accepts Sochor's statement of the case, however, for this Court's edification a summary of the facts is included in Respondent's Appendix A pages JA i-vi.

SUMMARY OF THE ARGUMENT

Appellate review of capital cases in Florida is constitutionally sound. The Florida Supreme Court's harmless error analysis, in general and as applied to the instant case, is in conformity with this Court's precedent on the issue.

Under Florida's sentencing scheme, the jury's role is strictly advisory. The trial judge makes independent factual findings, in writing, to support a sentence of death. Those written findings are the basis for determining the appropriateness of the sentence to a given case.

The Florida Supreme Court carefully reviewed the record and upheld the trial court's findings regarding the total absence of any mitigating evidence. The Court then reviewed the trial judge's sentencing order regarding aggravating factors. After finding insufficient evidence to sustain one of the aggravating factors, the Court was able to conclude that, beyond a reasonable doubt that absent one of the aggravating factors, the trial court would still have imposed the death penalty. This procedure satisfies the

requirements of *Clemons v. Mississippi,* 110 S.Ct. 1441 (1990).

The Florida Supreme Court also found that the aggravating factor that the murder was "especially heinous, atrocious, or cruel" was proven beyond a reasonable doubt.

In reviewing this aggravator, the Florida Supreme Court continues to apply the standard set out in the polestar case of *State v. Dixon,* 283 So.2d 1 (Fla. 1973), *cert. denied,* 416 U.S. 943 (1974), and approved in *Proffitt v. Florida,* 428 U.S. 242 (1976).

The instant case is controlled by *Walton v. Arizona,* 497 U.S. ____, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990), wherein the Court found that in Arizona, like Florida, the judge imposes sentence. *Maynard v. Cartwright,* 486 U.S. 356 (1988), and *Shell v. Mississippi,* 498 U.S. ____, 111 S.Ct. 313, 112 L.Ed.2d 1 (1991), do not apply to judge sentencing schemes.

I. THE FLORIDA SUPREME COURT CONDUCTED A PROPER HARMLESS ERROR ANALYSIS IN CONFORMITY WITH BOTH THE UNITED STATES CONSTITUTION AND *CLEMONS v. MISSISSIPPI.*

Sochor claims that the Florida Supreme Court's harmless error analysis is constitutionally infirm in several respects. Specifically, he alleges that 1) although an aggravating factor has been struck, the court automatically affirms a death sentence provided that at least one aggravating factor remains; 2) the Florida Supreme Court does not apply its harmless error test in any consistent or rational manner; 3) the Court's limited and mechanical analysis does not include proper consideration of the effect the impermissible aggravating factor had on the jury's death recommendation

herein; 4) the analysis did not take into account the legally cognizable aggravation against legally cognizable mitigation;[1] and 5) the court's review of his sentence amounted to nothing more than a tabulation of the aggravating and mitigating circumstances of the trial court's findings. As such, Sochor asserts appellate review in Florida and as applied *sub judice,* violates *Clemons v. Mississippi,* 494 U.S. __, 108 L.Ed.2d 812 (1990) and *Parker v. Dugger,* 498 U.S. __, 112 L.Ed.2d 812 (1991).

The first two allegations are indictments against Florida's capital sentencing in general. Sochor's claim that the supreme court conducts its harmless error analysis in an automatic or mechanical fashion was clearly rejected by the Court in *Barclay v. Florida,* 463 U.S. 939, 957-958 (1983).[2]

Early on, cases were generally remanded for resentencing if an aggravating factor had been struck. *Barclay, supra, citing to Elledge v. State,* 346 So.2d 998 (Fla. 1977). Since that time, the Florida Supreme Court has not automatically

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1 This Court denied certioari review as to the first question regarding whether the trial court or the Florida Supreme Court properly considered the mitigating evidence presented.

2 *See also, Randolph v. State,* 463 So.2d 186 (Fla. 1984); *Songer v. States,* 544 So.2d 1010 (Fla. 1989); *Nibert v. State,* 508 So.2d 1 (Fla. 1987). In all three cases the Florida Supreme Court either imposed a life sentence or remanded for reconsideration *where there was at least one valid aggravating factor.*

remanded for resentencing. *Songer v. State,* 544 So.2d 1010 (Fla. 1989).[3]

Further Sochor's claim that there is no discernible rational basis for appellate review of death sentences in Florida is incorrect.

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3 Indeed, contrary to this Court's generalization in *Parker v. Dugger,* 498 U.S. ___, 112 L.Ed.2d 812, 815 (1991), that the Florida Supreme Court's practice is to remand for resentencing when an aggravating factor is struck and *mitigation* exists, Florida *caselaw reflects* that a remand is only required if the error is *not harmless* or if the Court is unable to apply harmless error because there is reasonable doubt as to the weight given the factors by the trial court. *Hargrave v. State,* 366 So.2d 1 (Fla. 1978); *Brown v. State,* 381 So.2d 690 (Fla. 1980); *Bassett v. State,* 449 So.2d 803 (Fla. 1984); *Hamblen v. State,* 546 So.2d 1039 (Fla. 1989). Specifically, in accord with *Clemons v. Mississippi, supra,* the Florida Supreme Court either applies harmless error and affirms or reverses and remands for further consideration by the trial court. In fact, the Florida Supreme Court is mandated by statute to apply a harmless error analysis before reversing a conviction or sentence. Fla.Stat. 59.041 and 924.33. *See Clark v. State,* 443 So.2d 973 (Fla. 1983)(harmless error analysis); *Kennedy v. State,* 455 So.2d 351 (Fla. 1984)(same); *Pope v. State,* 496 So.2d 798 (Fla. 1986)(same).

Certainly, this Court did not intend in its opinion in *Parker, supra,* to suggest that the Eighth Amendment is violated any time a state appellate court has committed an error in its application of state law or chooses to ignore or not continue to adhere to the well-thought out prior decisions. Nor can this Court be suggesting that unless an appellate court "fully" articulates its reasons for determining the disposition of a case, an Eighth Amendment violation occurs. Most recently in *Ylst v. Nunnemaker,* 501 U.S. ___, 115 L.Ed.2d 706, 717 (1991), the Court stated, "[t]he maxim is that silence implies consent, not the opposite — and courts generally behave accordingly, affirming without further discussion when they agree, not when they disagree, with the reasons given below." When a court has exercised its appellate judgment in a certain way, either applying a "procedural bar" or a "harmless error" analysis, presumably elaboration on a point at issue is only necessary to correct errors or interpret the law. Unless an assertion is made that would "constitute *strong* evidence that the presumption, as applied, is wrong," state courts should continue to enjoy the deference accorded them in *Sims v. Georgia,* 385 U.S. 38 (1967) and *La Vallee v. Della Rose,* 410 U.S. 690 (1973).

In all capital cases the sufficiency of the evidence at the guilt and penalty phases is reviewed. *Adams v. State,* 412 So.2d 850, 855 (Fla. 1982). If a case is affirmed in all respects with regard to the issue raised and the Court is satisfied that § 921.141, Fla.Stat., has been properly applied, the court then conducts a proportionality analysis. *Id.* The sentence is either affirmed if proportionate, *Riechmann v. State,* 581 So.2d 133 (Fla. 1991), or remanded for imposition of a life sentence if the death sentence is deemed disproportionate. *Songer, supra.*[4]

In cases where the Court has reviewed the trial court's order and determined that either an error has occurred regarding factual findings in the sentencing circumstances, *Rivera v. State,* 545 So.2d 864 (Fla. 1989), or that an error has occurred regarding the admissibility of evidence, *Derrick v. State,* 581 So.2d 31 (Fla. 1991), the harmlessness of the error is reviewed. If the error is harmless, the Court

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4 *See Smalley v. State,* 546 So.2d 720 (Fla. 1989) and *Nibert v. State,* 574 So.2d 1059 (Fla. 1990) (substantial mental mitigating evidence made death a disproportionate sentence); centra: *Hudson v. State,* 538 So.2d 829 (Fla. 1989) (death is appropriate where two valid aggravating factors existed, nothing in mitigation, and the crime was not a domestic confrontation, defendant was armed and had a prior felony).

will affirm the death sentence.[5] Remand to the trial judge will be ordered if the error is not harmless. *Gafford v. State,* 387 So.2d 333 (Fla. 1980) (remand before trial court when error involved an improper doubling of two aggravating factors to-wit: robbery and pecuniary gain. One valid aggravating and two statutory mitigating factors did not permit court to find with confidence error harmless). Error effecting the entire sentencing process will, of course, require remand for an entirely new sentencing including impaneling a new jury. *Derrick, supra* (harmful error to admit defendant's statement at penalty phase that he would kill again); *See, Bello v. State,* 547 So.2d 914 (Fla. 1989).

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5 Harmless error analysis applies to jury instructions, *Stewart v. State,* 558 So.2d 416 (Fla. 1990); limitation on defense argument and strategy, *Colina v. State,* 570 So.2d 929 (Fla. 1990); and improper prosecutorial argument, *Bertolotti v. State,* 476 So.2d 130 (Fla. 1985). *Rivera, supra,* the striking of two aggravating factors held to be harmless error because of the existence of four other valid aggravating circumstances and no mitigating circumstances.

The case *sub judice* falls into this second scenario. The jury recommended death by a vote of ten to two. The trial court imposed a death sentence finding four aggravating factors and *nothing* in mitigation. Although the Florida Supreme Court found insufficient evidence of the "cold, calculated and premeditated aggravator," the striking of that factor did not effect the weighing process as there remained three valid aggravating factors to be weighed against nothing in mitigation. *Sochor v. State,* 580 So.2d 595 (Fla. 1991). *See also Capehart v. State,* 583 So.2d 1009 (Fla. 1991)(four aggravating factors at least one nonstatutory mitigating factor; court struck one aggravator, harmless error — death appropriate). Although the Florida Supreme Court has never countenanced the idea, when an aggravating factor is found wanting, and viable aggravation exists and no mitigation is present, a strong presumption that the error was harmless is not impermissible.

In judicial override cases where the trial court imposes death following a jury recommendation of life, *Tedder v. State,* 322 So.2d 908, 910 (Fla. 1975) controls.[6]

Absent a claim of fundamental error, the application of the harmless error doctrine has been employed to review both guilt and sentencing issues since "time in memoriam." State appellate courts, like Florida, have fashioned *Chapman* — like clones of harmless error analysis which permit courts to review in a cognizable manner trial errors which are not of such a fundamental nature that the validity of a judgment or correctness of a sentence is brought into question. In *Rose v. Clark,* 478 U.S. 570 (1986) for example, the Court applied a harmless error analysis as to whether the jury instructions found therein violated *Sandstrom v. Montana,* 422 U.S. 510 (1979). In *Clemons v. Mississippi,* 494 U.S. __, 108 L.Ed.2d 725 (1990) this Court articulated a distinction between

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6 The *Tedder* standard provides that in order to sustain a sentence of death following a jury recommendation of life, "the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." 322 So.2d at 910.

In *Parker v. Dugger, supra,* (a judicial override case) this court *did not* conclude that the Florida Supreme Court failed to comply with the *Tedder* standard. Rather, it found the Florida Supreme Court failed to consider "nonstatutory mitigation" presumably found by the trial court. *Parker,* 112 L.Ed.2d at 824. "[A]fter striking two aggravating circumstances, the Florida Supreme Court affirmed Parker's death sentence without considering the mitigating circumstances. This affirmance was invalid because it deprived Parker of the individualized treatment to which he is entitled under the Constitution. *See Clemons, supra,* at ___, 108 L.Ed.2d 725, 110 S.Ct. 1441." *Parker,* 112 L.Ed.2d at 827.

Remarkably *absent* from the *Parker* discussion and conclusion is *any* suggestion that the Eighth Amendment would require a harmless error analysis by the Florida Supreme Court of anything other than the aggravating and mitigating circumstance of that individual case. There is no constitutional mandate expressed, that in judicial override cases or for that matter, "nonjudicial override" cases, the Florida Supreme Court had to consider as part of a harmless error analysis, what impact the "error" would have had on the jury's recommendation.

errors which merely involve the invalidation of an aggravating circumstance supported by otherwise admissible evidence, in contrast to an error which allowed the jury to consider evidence that was incorrect or inaccurate.[7] *Id.* 108 L.Ed.2d at 742 n.5. The decision to apply harmless error must be made by the appellate courts. *Id.*[8]

To illustrate, in *Johnson v. Mississippi,* 486 U.S. 578 (1988) this Court was unable to say that an error, which allowed the jury to consider evidence which was ultimately determined to be incorrect, was harmless. Mississippi relied on a prior conviction of a capital defendant to sustain an aggravating factor. Subsequent to the sentencing proceeding the prior conviction was vacated. Because the sentencer in Mississippi heard evidence regarding the capital defendant's background that was materially inaccurate, coupled with the fact such evidence was repeatedly emphasized by the prosecutor, the error could not be deemed harmless. *Johnson,* 486 U.S. at 587.

Likewise, in *Satterwhite v. Texas,* 486 U.S. 249 (1988) a psychiatrist's testimony regarding the defendant's future dangerousness, lack of conscience and sociopathic nature was erroneously admitted at sentencing. *Satterwhite,* 486 U.S. at 259. Although this Court found the error harmful, the Court reaffirmed that a harmless error analysis was applicable to capital murder cases in general and penalty phases in particular. *See Wainwright v. Goode,* 464 U.S. 78, 86 (1983)(the trial court erroneously considered the defendant's future dangerousness when determining the appropriate sentence). Since the evidence was otherwise not constitutionally inadmissible, consideration of the evidence

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7 Although more difficult to apply a harmless error analysis to the latter, this Court has not suggested that harmless error review cannot be conducted. Quite to the contrary, "this Court noted in vacating the sentence that the Mississippi Supreme Court's refusal to rely on harmless error analysis in upholding the sentence was 'plainly justified' because the error 'extended beyond the mere invalidation of an aggravating circumstance supported by evidence that was otherwise admissible' and in fact permitted the jury to 'consider evidence that [was] revealed to be materially inaccurate'." 486 U.S. at 590. The Court did not hold that the Mississippi Supreme Court could not have applied harmless error analysis. *Id.*

The Florida Supreme Court has recently applied the harmless error analysis to a *Johnson v. Mississippi* claim. *Owen v. State,* __ So.2d __ Case No. 68,549 (Fla. January 23, 1992):

> "During the penalty proceeding before the jury, the State introduced evidence of Owen's convictions in the Delray Beach murder, sexual battery, and armed burglary. *See Owen.* The trial court used these convictions as a basis for finding as an aggravating factor that Owen had previously been convicted of another capital or violent felony. Owen now claims that he is entitled to a new sentencing proceeding because the Delray Beach convictions were subsequently reversed by this Court. *Id.* Based on our examination of the record, however, we conclude that use of this evidence was harmless error. Given the nature and extent of other evidence in aggravation presented to the jury we conclude that its recommendation would have been unchanged. We similarly conclude that the trial court's sentence would have been the same because the aggravating circumstance concerning prior conviction of a violent felony was adequately supported by Owen's conviction for attempted first-degree murder in a third case. *Owen,* slip opinion at 9.

8 The fact that harmless error analysis is applied in some instances and not in others is not evidence that a reviewing court acts arbitrarily in making such determinations. *Clemons,* 108 L.Ed.2d at 742.

Given this Court's emphasis on the "twin objectives of 'measured consistent application' and 'fairness to the accused'," *Eddings v. Oklahoma,* 455 U.S. 104, 110-111 (1982), along with an individualized sentencing determination, *Lockett v. Ohio,* 438 U.S. 586 (1978), a decision to apply harmless error must be made on a case-by-case basis. *Clemons,* 108 L.Ed.2d at 742 n.7.

did not effect the balancing process. *Zant v. Stephens,* 462 U.S. 862, 887 (1983) (harmless error utilized albeit the Georgia Supreme Court struck an aggravating factor). This Court reasoned that the evidence admitted to support the suspect aggravating factor was properly admissible regardless of the fact that there was insufficient evidence to sustain the finding of that factor. *Johnson,* 486 U.S. at 590 n.9.

The Florida Supreme Court's harmless error approach, in general as well as in the instant case, is identical to the analysis set forth in *Chapman v. California,* 386 U.S. 18 (1967). Notwithstanding Sochor's assertions otherwise, a clear pattern emerges from the decision of the Florida Supreme Court.

In *State v. DiGuilio,* 492 So.2d 1129, 1135 (Fla. 1986) the Court explained harmless error analysis in generic terms:

> Application of the test requires an examination of the entire record by the appellate court including a close examination of the permissible evidence on which the jury could have legitimately relied, and in addition an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict.

The utilization of this analysis in capital cases results in constitutionally sound appellate review.[9] Once an aggravating factor has been struck, the court may affirm a death sentence *if,* and only if, it can conclude beyond a reasonable doubt that absent the aggravating factor, a sentence of death is appropriate based on the strength of the remaining aggravating factors weighed against the mitigating factors.

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9 In fact, the Florida Supreme Court in *Ciccarelli v. State,* 531 So.2d 129 (Fla. 1988), makes it clear that the harmless error standard of *State v. DiGuilio,* 491 So.2d 1129 (Fla. 1986) might be more difficult to overcome than *Chapman, supra,* or *United States v. Hastings,* 461 U.S. 499 (1983). Citing *DiGuilio,* the Court allowed that they "wish to make it clear that the harmless error test is to be *rigorously* applied, we examine the records ourselves rather than remanding... 491 So.2d at 1137;" and *Ciccarelli,* 531 So.2d at 131-132 — wherein the Court held:

> The examination of a record for the purpose of evaluating harmless error necessarily involves more than a resolution of contested facts. The function of an examination for this purpose is to take account of what the error meant to [the jury or sentencing judge], not singled out and standing alone, but in relation to all else that happened. And one must judge others' reactions not by his own, but with allowance for how others might react and not be regarded generally as acting without reason. This is the important difference, but one easy to ignore when the sense of guilt comes strongly from the record. *Kotteakos v. United States,* 328 U.S. 750, 764, 66 S.Ct. 1239, 1247-1248, 90 L.Ed.1557 (1946).
>
> This requires more than a mere totaling of testimony, and, in most instances, more than a mere reading of a portion of the record in the abstract. It entails an evaluation of the impact of the erroneously admitted evidence in light of the overall strength of the case and the defenses asserted. Unlike the initial decision of whether error occurred, which in many instances can be made from a fragment of the record or the examination of the law alone, the effect of error on the verdict is a different inquiry. It must, in most cases, be evaluated through the examination of the entire trial transcript. The court must determine *not* if there is overwhelming evidence of guilt, but if it can be said beyond a reasonable doubt that the verdict could not have been affected by the error.

Capehart v. State, 583 So.2d 1009 (Fla. 1991), *cert. denied* January 21, 1992. Dispositive of the issue in *Capehart,* was the fact that the invalidation of an aggravating circumstance, unsupported by the evidence, did not influence the sentencing outcome. *See also Herring v. State,* 580 So.2d 135 (Fla. 1991) (striking "cold calculated and premeditated" held harmless as the facts before the jury were not changed despite invalidation of this factor).[10] If, however, the error infected the entire sentencing process, a remand is warranted for a "new sentencing proceeding." In other words, if the error altered the record regarding what evidence the sentencer should have heard *and* the sentencer was erroneously instructed, a new hearing will probably be ordered pursuant to § 921.141, Fla.Stat. *Jones v. State,* 569 So.2d 1234 (Fla. 1990).

The Supreme Court in *Jones,* concluded a new sentencing hearing was mandated due to an erroneous instruction and inadmissible evidence presented concerning a sexual battery on the victim's corpse. Under Florida caselaw acts occurring to the victim after death are inappropriate considerations in determining the sentence to be imposed. *Halliwell v. State,* 323 So.2d 557 (Fla. 1975). Likewise, in *Omelus v. State,* 584 So.2d 563, 565 (Fla. 1991) the jury was allowed to consider an aggravating factor that could not possibly be applied to the defendant who was the procurer

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10 The Florida Supreme Court has upheld death sentences despite the trial court's reliance on an invalid aggravating factor when other remaining valid aggravating factors are balanced against "little" in mitigation. *Shere v. State,* 579 So.2d 86 (Fla. 1991); *Green v. State,* 583 So.2d 647 (Fla. 1991) and cases cited therein; *Holton v. State,* 573 So.2d 284 (Fla. 1990); *Hill v. State,* 515 So.2d 176 (Fla. 1987), *cert. denied,* 485 U.S. 993, (1988); *Rogers v. State,* 511 So.2d 526 (Fla. 1987), *cert. denied,* 484 U.S. 1020 (1988); *Bassett v. State,* 449 So.2d 803 (Fla. 1984); *Brown v. State,* 381 So.2d 690 (Fla. 1980), *cert. denied,* 449 U.S. 1118 (1981); *Bruno v. State,* 574 So.2d 76 (Fla. 1991); *Mitchell v. State,* 527 So.2d 179 (Fla. 1988); *Wickham v. State,* 16 F.L.W. S777 (Fla. December 20, 1991).

of a murder and could not be held responsible for how the actual murderer committed the murder. The court remanded for resentencing before a newly impaneled jury even though the trial judge had not included that "factor" in his sentencing determination.[11] The same result has occurred even where inadmissible collateral crime evidence was admitted at the guilt phase and deemed harmless as to guilt, but found harmful as to sentencing. *Castro v. State,* 547 So.2d 111 (Fla. 1989).[12] The Court noted a distinct difference between the guilt and penalty phases:

> We are not persuaded, however, that McKnight's testimony was equally harmless as to the death sentence. Substantially different issues arise during penalty phase of a capital trial that require analysis qualitatively different than that applicable to the guilt phase. What is harmless to

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11 *Hill v. State,* 549 So.2d 179, 184 (Fla. 1989)(case remanded for a new penalty phase hearing with a newly impaneled jury because the jury may have been improperly influenced by the incorrect information that "lack of remorse" is a proper consideration in aggravation, contrary to *Pope v. State,* 441 So.2d 1073 (Fla. 1983).

In contrast to the outcome in *Omelus,* the court in *Bowden* refused to find error even though the jury was instructed on an aggravating factor that the trial court did not find sufficient evidence to sustain. *Bowden v. State,* 16 F.L.W. S614 (Fla. September 12, 1991). This is so because there was admissible evidence before the jury which arguably could have sustained a finding of the aggravator, consequently the jury was not subjected to otherwise inadmissible evidence.

12 *See also, Colina v. State,* 570 So.2d 929 (Fla. 1990)(harmless error at guilt phase in prohibiting defendant to testify regarding codefendant's statement in conjunction with impermissible argument pertaining to lack of remorse at penalty phase held not to be harmless error at penalty phase); *Dudley v. State,* 545 So.2d 857 (Fla. 1989)(harmless error at guilt phase in permitting witness to testify that defendant said "I did it" not considered harmless as to penalty phase); *Derrick v. State,* 581 So.2d 31 (Fla. 1991)(harmless error at guilt phase allowing witness to say that defendant told he would kill again, not harmless as to penalty).

one is not necessarily harmless as to the other,...*Id,* at 115.

Remand may also be necessary if the jury has been precluded from considering a mitigating factor because the trial court refused to instruct on a particular factor. *Stewart v. State,* 558 So.2d 416 (Fla. 1990). In essence, the Florida Supreme Court will order a new "sentencing hearing," before a judge and new jury, if the harmful error skewed the entire sentencing process, i.e., *Jones; Omelus.*[13]

If the error significantly altered the balance of the remaining aggravating and mitigating factors the court will remand for reweighing by the sentencing judge. *Santos v. State,* ___ So.2d ___ (Fla. September 26, 1991) 16 F.L.W. S633 (striking of aggravating factors coupled with trial court's failure to find valid mitigating evidence requires resentencing before a judge without a new jury).[14]

Sochor claims that the Court did not properly consider the "effect" the impermissible aggravating factor of "cold, calculated and premeditated" had on the jury's

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13 In *Hitchcock v. Dugger,* 481 U.S. 393 (1987) this Court found an Eighth Amendment violation due to a *Lockett* error. In this unanimous opinion, the Court opined that "no harmless error" was offered by Respondent, nor was it argued that the error "had no effect on the jury or the sentencing judge." 481 U.S. 399.

14 A review of the cases herein illustrate that when a "substantial" number of aggravating factors have been found invalid or it cannot be ascertained whether the trial court considered valid mitigating evidence presented, remand without a jury is sufficient. *Lamb v. State,* 532 So.2d 1051 (Fla. 1988); *Schaffer v. State,* 537 So.2d 988 (Fla. 1989); *Cook v. State,* 542 So.2d 964 (Fla. 1989); *Gafford v. State,* 387 So.2d 33[illegible]Fla. 1980); *Randolph v. State,* 463 So.2d 186 (Fla. 1984). *Foster v. State,* 436 So.2d 56 (Fla. 1983); *Mines v. State,* 390 So.2d 332 (Fla. 1980); *Peavy v. State,* 442 So.2d 200 (Fla. 1983); *Ferguson v. State,* 417 So.2d 631 (Fla. 1982); *Moody v. State,* 418 So.2d 989 (Fla. 1982).

recommendation.[15] Amicus Curiae for the Capital Collateral Representative of the State of Florida characterizes the jury as the *de facto* sentencer. Consistent with Sochor's reliance on the *Tedder* standard and on the number of override cases reversed by the Florida Supreme Court, Amicus and Sochor contend that the jury's recommendation is binding on the trial court, consequently the jury is the real sentencer in Florida.

The question redounds, who is the sentencer in Florida? The Florida Legislature created § 921.141(2), Fla.Stat., which states the trial court is the sentencer. The decisions

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15 There is no constitutional requirement that any particular deference must be afforded, a jury's sentencing recommendation: "Our responsibility, however, is not to second-guess the deference accorded the jury's recommendation in a particular case, but to ensure that the result of the process is not arbitrary or discriminatory." *Spaziano v. Florida,* 468 U.S. 477, 465 (1984). Moreover, in *Clemons* this court rejected the notion that a jury recommendation with accompanying factual findings is required to ensure adequate appellate review. *Id.,* 108 L.Ed.2d at 739.

of the Florida Supreme Court and this Court hold that the trial judge is the sentencer.[16]

In *Parker v. Dugger,* 498 U.S. ___, 112 L.Ed.2d 812, 821-822 (1991), the Court reviewed Florida's death penalty statute (in a judicial override case) and concluded that the trial court is the sentencer pursuant to § 921.141, Fla.Stat.

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16 In *Dobbert v. Florida,* 432 U.S. 282, 295-296 (1977) the Court characterized the *Tedder* standard as illustrative that appellate review of death sentences is not perfunctory. To suggest *Tedder* alters the sentencing scheme beyond that permitted by law is inaccurate and not supported by any authority.

Interestingly, the Court in *Proffitt* concluded any "arbitrariness or capriciousness" was minimized given the fact that at the time the Florida Supreme Court had vacated eight of the twenty-one capital cases it had reviewed. *Proffitt,* 428 U.S. at 253. Of those eight cases reversed by the Florida Supreme Court, one was reversed for failure to impanel a jury for the sentencing phase. *Lamadline v. State,* 303 So.2d 17 (Fla. 1974). Of the remaining seven, five were override cases. *Thompson v. State,* 328 So.2d 1 (Fla. 1976); *Tedder v. State,* 322 So.2d 908 (Fla. 1975); *Swan v. State,* 322 So.2d 485 (Fla. 1975); *Slater v. State,* 316 So.2d 539 (Fla. 1975); *Taylor v. State,* 294 So.2d 648 (Fla. 1974). The fact that five of seven cases overturned by the Florida Supreme Court were override cases did not move this Court to elevate the jury's advisory status to that of sentencer.

The Florida Supreme Court has continually reaffirmed that the jury renders a sentence recommendation only. *Grossman v. State,* 525 So.2d 833, 840 (Fla. 1988)(Florida Supreme Court rejects defendant's characterization of the jury as the *de facto* sentencer regardless of the number of override cases reversed by the court); *Rogers v. State,* 511 So.2d 526 (Fla. 1987)(Florida Supreme Court rejected defendant's argument that the trial court gave undue weight to the jury's death recommendation. "Trial court is required to make an independent determination regarding imposition of sentence"); *Smalley v. State,* 546 So.2d 720 (Fla. 1989)(trial court as the sentencer is required to make written factual findings); *Ross v. State,* 386 So.2d 1191, 1197 (Fla. 1980)(regardless of the jury's recommendation, death or life, the trial court must make an independent determination regarding factual findings to support its sentencing determination.

Furthermore, interpretation of state law by a state's highest court is binding on the federal courts. *Goode v. Wainwright,* 464 U.S. 78, 84 (1983).

Indeed, this Court has repeatedly rejected challenges to Florida's death sentencing scheme which " 'provides for sentencing by the judge, not the jury.' *Hildwin v. Florida,* 490 U.S. ___, 104 L.Ed.2d 728, 109 S.Ct. 2055 (1989); *Spaziano v. Florida,* 468 U.S. 447, 82 L.Ed.2d 340, 104 S.Ct. 3154 (1984); *Proffitt v. Florida,* 428 U.S. 242, 49 L.Ed.2d 913, 96 S.Ct. 2960 (1976)...." Walton v. Arizona, 111 L.Ed.2d at 524. *See also Barclay v. Florida,* 463 U.S. 939, 952-953 (1983).

Sochor points to no state authority which concurs with his contention that in Florida, the jury that makes a "sentencing recommendation,"[17] is the true sentencer, rather than the trial court who, pursuant to the statute, § 921.141(3), Fla.Stat.:

> Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its finding upon which the sentence of death is based as to the facts:
>
> (a) that sufficient aggravating circumstances exist as enumerated in §§ (5), and
>
> (b) that there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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17 There is no provision in the Florida Statutes or by case decision that would permit the jury's recommended sentence *alone* to constitute the "sentence" in a given case. Moreover, § 921.141, Fla.Stat., specifically allows a defendant to "waive" a jury's recommended sentence, and notably absent from the statute is any language that provides the "recommendation" is binding on the true sentencer, the trial judge.

> In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in §§ (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose a sentence of life imprisonment in accordance with § 775.082.

In *Walton v. Arizona,* 111 L.Ed.2d at 524-525, the Court, in reviewing Walton's comparison of Arizona's death penalty statute with that of Florida's, observed:

> ...It is true that in Florida the jury recommends the sentence, but it does not make specific factual findings with regard to the existence of mitigating or aggravating circumstances and its recommendation is not binding on the trial judge. A Florida trial court no more has the assistance of a jury's finding of fact with respect to sentencing issues than does a trial judge in Arizona.

Likewise, in *Walton v. Arizona, supra,* this Court reviewed a similar challenge that the Arizona scheme would be constitutional only if a jury decides what the sentence should be. In rejecting the need for jury sentencing over sentencing by a trial judge, the court found that neither Arizona's nor Florida's death sentencing schemes substituted the jury for the trial judge as the sentencer. Sochor makes no valid attempt to demonstrate otherwise. At best, he can only point to cases where the jury has provided a life recommendation and the trial court overrides the recommendation and imposes death. Because the Florida Supreme Court utilizes its *Tedder* standard, *Tedder v. State,* 322 So.2d 908 (Fla. 1975); or the Florida Supreme Court notes the importance of the jury's recommendation in Florida's trifurcated capital

sentencing scheme, *Riley v. Wainwright,* 517 So.2d 656, 659 (Fla. 1987); or the jury is traditionally depicted as the conscious of the community and makes a statement about the appropriateness of the sentence to be imposed, *Mann v. Dugger,* 844 F.2d 1446, 1454 (11th Cir. 1988) *(en banc), cert. denied,* 489 U.S. 1071 (1989); or that the *Tedder* standard applies regardless of whether the jury recommended death or life imprisonment, *Grossman v. State,* 525 So.2d 833, 840, n.1 (Fla. 1988), does not make the jury "the sentencer" under Florida's capital sentencing scheme.

For example, in *Christopher v. State,* 583 So.2d 642, 646 (Fla. 1991), the Florida Supreme Court, in spite of a jury's recommendation of death by a vote of 9-3, imposed a life sentence because the trial court did not make contemporaneous written findings in Christopher's case per § 921.141(3), Fla.Stat., citing *Grossman v. State,* 525 So.2d 833, 841 (Fla. 1988). Similarly, in *Bouie v. State,* 559 So.2d 1113, 1116 (Fla. 1990), the court held:

> ...Trial courts have been given considerable leeway in the timely filing of written findings which demonstrate the weighing of facts and the independent exercise of reasoned judgment needed to support a death sentence. (cites omitted)....Because of the absence of the requisite findings, we therefore follow the statutory mandate and reduce Bouie's sentence to life imprisonment with no possibility of parole for twenty-five years. *See Grossman v. State,* 525 So.2d 833, 841 (Fla. 1988), *Stewart v. State,* 549 So.2d 171 (Fla. 1989).

In other words, no matter that the jury's recommendation is death, the failure by the trial court to make written findings of fact setting forth aggravating and mitigating circumstances justifying a sentence of death, requires a life

sentence be imposed.[18] Moreover, in those circumstances where judicial overrides are sustained, the Florida Supreme Court has observed in applying the *Tedder* standard:

> A judge's override is not improper simply because a defendant can point to some evidence established in mitigation. In *Tedder,* this Court held that 'in order to sustain a sentence of death following a jury's recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.' *Tedder,* 322 So.2d at 910.

Zeigler v. State, 580 So.2d 127, 131 (Fla. 1991). The Court further concluded:

> In this case, the evidence in mitigation is minuscule in comparison with the enormity of the crimes committed. The defendant not only murdered his own wife in order to obtain insurance proceeds on her life but also murdered three other people in an elaborate plan to cover up his guilt. We agree that virtually no reasonable person could differ as to the appropriateness of the death sentence in this case.

580 So.2d at 131.

Sochor's reference to this Court's earlier decision in *Baldwin v. Alabama,* 472 U.S. 372, 382 (1985), does not stand for the proposition so articulated. He suggests that

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18 In *Hoffman v. State,* 474 So.2d 1178 (Fla. 1985), the Florida Supreme Court held that no error occurred where the trial court found the aggravating factor of heinous, atrocious or cruel applicable, although the jury was never given said instruction.

Additionally, in those cases where the jury recommends death *and* the trial court imposes a life sentence, the "sentence" is life.

any errors with regard to instructions given the jury cannot be "cured" by the trial court's findings or the appellate court's review because "the trial judge's findings and weighing were [not] independent of the flawed penalty verdict [the jury's recommendation]," citing *Baldwin,* n.39, p.41:

> Thus, this case does not present the question of whether a truly independent sentencing determination by the judge might satisfy *Clemons* and *Walton. See Baldwin v. Alabama,* 472 U.S. 372, 382 (1985) (erroneous jury recommendation irrelevant since court gave no deference to it, noting result might be different if, as in Florida, 'the judges were obligated to give some deference' to tainted recommendation).

(Sochor's Brief, page 41, n. 39).

In *Baldwin,* the Court noted that under the Alabama scheme the jury was required to impose a "mandatory" sentence of death once they convicted the defendant of homicide without hearing any evidence in mitigation. (Of course Alabama's sentencing procedure has since been changed and is closer to Florida's statute. *See Ala. Code 13A-5-49.)*

> ...This Court has stated that a death sentence based upon consideration of 'factors that are constitutionally impermissible or totally irrelevant to the sentencing process, such as for example the race, religious or political affiliation of the defendant,' would violate the Constitution. (cite omitted). Relying upon *Zant,* petitioner contends that, because the jury's mandatory 'sentence' would be unconstitutional standing alone, it is an impermissible fact for the trial judge to consider, as the statute appears to require, in the sentencing process. That argument conceivably might

> have merit if the judge actually were required to consider the jury's 'sentence' as a recommendation as to the sentence the jury believed would be appropriate, (cite omitted) and if the judge were obligated to accord some deference to it....

472 U.S. at 382.

Clearly, the constitutional infirmities discussed in *Baldwin* are not the circumstances herein presented.

Sochor has failed to articulate any rational basis upon which this Court could conclude that, under Florida's sentencing scheme, the jury, rather than the trial judge, is the sentencer. He has not distinguished the Florida experience from that of Arizona, nor has he shown that the conclusions drawn in *Walton v. Arizona, supra,* regarding Florida's death penalty statute are incorrect as to "who" the sentencer is in Florida.

In Sochor's case, the Florida Supreme Court found that the striking of one, of four, aggravating factors where no mitigation was found did not require "resentencing" nor was the imposition of death disproportionate. [19] *Sochor,* 580 So.2d at 604. Sochor challenged three of the four aggravating factors, 580 So.2d 595, 603 (Fla. 1990). The Court affirmed the existence of the aggravating factor that the murder was committed during the course of a kidnapping or sexual battery. *Sochor,* 580 So.2d at 603.[20]

Sochor admitted in his confessions that he killed Patricia Gifford during the course of her struggle to ward off his sexual advances. JA 118-124, 138-146. This testimony is corroborated by the testimony of his brother, Gary Sochor. JA 37-39.

The Court also affirmed the finding that the murder was especially heinous, atrocious, and cruel. *Id.* at 603. Sochor's brother testified that when the car stopped, Sochor got out of the truck. The next thing Gary stated was that Patricia was screaming for help and she begged for her life. JA 36-38, 92-92. Gary saw Sochor on top of Patricia. Gary tried to stop Sochor and in fact, threw a rock at his brother to make him stop. JA 37. Sochor also admitted to a cell-mate that Gary tried to stop him. Traces of blood and scratch marks were found on the passenger's side of the truck consistent with Sochor's confession that a struggle ensued. He admitted he had scratches all over his face. JA 139.

Testimony from Dr. Wright, the county medical examiner, fortified the finding that strangulation death is applicable to the heinousness factor. *Id.* at 603. Death by choking is caused from a breaking, tearing, or bending of the neck structure. JA 212. There is fear associated with strangulation due to the gradual inability to breathe. JA 212. Moreover, if the victim struggled, unconsciousness would occur after four minutes. JA 216.

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19 Florida's sentencing scheme affords more protection and safeguards than is constitutionally required. Proportionality review, although not constitutionally mandated, *Pulley v. Harris,* 465 U.S. 37 (1984), is a requirement in appellate review under Florida law. *Tillman v. State,* 16 F.L.W. S674 (Fla. October 17, 1991).

Evidence of collateral crimes where no conviction has been obtained is inadmissible in the sentencing phase of a capital case under Florida law, *Burr v. State,* 550 So.2d 444 (Fla. 1989), regardless of the fact that no such constitutional impediment exists. *Dowling v. United States,* 493 U.S. 342 (1990).

20 In contrast to what this Court said in *Parker v. Dugger,* 498 U.S. at __, 112 L.Ed.2d at 825, in the instant case there is no evidence that the Florida Supreme Court misread the trial judge's findings or mischaracterized them.

Although Sochor did not challenge the sufficiency of the evidence with respect to his convictions of prior violent felonies, the nature of those crimes was introduced by the state at the penalty phase.[21]

The Florida Supreme Court did find insufficient evidence to sustain the aggravating factor § 921.141(5)(i), Fla.Stat., that the murder was "cold, calculated and premeditated." 580 So.2d at 603. The evidence of "heightened" premeditation was not proven beyond a reasonable doubt. The killing resulted from the victim's resistance to Sochor's sexual advances, not a pre-planned desire to kill. *Id.* at 6[illegible].

In reviewing the trial court's findings regarding the absence of mitigation, the Court properly refused to second-guess the trial court's written order, *citing to Stano v. State,*

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21 Testimony was admitted regarding Sochor's prior sexual batteries. The first sexual battery was committed in August 1979 in Michigan. A fugitive from Michigan at the time of this rape, Sochor met a girl in a bar and asked her for a ride home. He made sexual advances to her in the car which she resisted. He choked her into unconsciousness. When she awoke she was naked and Sochor was in the act of raping her. After raping her in the car, he took the victim back to his apartment where he raped her two more times. (R 976). Sochor has admitted this rape. (R 982-986).

The second sexual battery occurred in Fort Lauderdale on March 14, 1980. (R 990). The victim upon leaving a bar saw a man [Sochor] lying on the ground. He said something to her but she continued to walk to her car. (R 992). Sochor came from behind her and forced his way into her car. He held onto her as she drove to a secluded area of town. He forced her out of the car and into an abandoned camper shell. (R 993-994). He then ripped off her clothes and repeatedly raped her vaginally, anally and orally. (R 994). During the attack Sochor became angry with the victim because he could not ejaculate. He viciously bit her breast and vagina. (R 994-995). Throughout the attack he threatened to stab her and cut her breasts. (R 992-995). Sochor confessed to this rape as well. (R 981-985).

Sochor's former wife testified that Sochor became violent if denied sex. He had previously assaulted her during these sexual episodes on at least thirty occasions. Sochor's propensity for violence was readily apparent regardless of whether he was consuming alcohol. (R 954-955).

460 So.2d 890 (Fla. 1984), *cert. denied,* 471 U.S. 111 (1985). *Id.* at 603-604.[22]

Consistent with *Rose v. Clark,* 478 U.S. at 582, *Clemons* 108 L.Ed.2d at 742, the Florida Supreme Court found the striking of one aggravating factor under these circumstances harmless, citing *Robinson v. State,* 574 So.2d 108 (Fla. 1991)(weighing process not affected by striking one aggravating factor when there remained four valid aggravators and "little" in mitigation); *Holton v. State,* 573 So.2d 284 (Fla. 1990)(striking one of four aggravating factors compared with mitigating evidence that defendant is a drug addict and a parent was harmless beyond a reasonable doubt); *James v. State,* 453 So.2d 786 (Fla.), *cert. denied,* 469 U.S. 1098 (1984)(reversal not required where there remained three valid aggravating factors and nothing in mitigation after striking one aggravating factor); *Francois v. State,* 407 So.2d 85 (Fla. 1981), *cert. denied,* 458 U.S. 1152 (1982)(although three aggravating factors were struck, there remained four valid factors with nothing in mitigation).

The Court also conducted a proportionality review, relying on similar cases where death occurred as a result of strangulation following a sexual battery, *Tompkins v. State,* 502 So.2d 415 (Fla. 1986); *Doyle v. State,* 460 So.2d 353 (Fla. 1984); *Hitchcock v. State,* 578 So.2d 685 (Fla. 1990) and held Sochor's "sentence of death proportionate to his crime." 580 So.2d at 604.[23]

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22 *Eddings v. Oklahoma,* 455 U.S. 104 (1982)(weight to be given mitigating evidence is within the sentencer's discretion).

23 The Court found none of Sochor's other claims to be meritorious and specifically found others to be procedurally barred especially trial and penalty phase jury instructions. 580 So.2d at 602-603.

II. THE AGGRAVATING FACTOR OF "ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL" HAS BEEN SUFFICIENTLY DEFINED TO SATISFY THE REQUIREMENTS OF *MAYNARD v. CARTWRIGHT*, 486 U.S. 356 (1988); AND *WALTON v. ARIZONA*, 497 U.S. ____, 111 L.Ed.2d 511 (1990).

Sochor contends that Florida's aggravating circumstance of "especially heinous, atrocious or cruel", § 921.141(5)(h), Fla.Stat., is unconstitutionally vague on its face and as applied to him.[24] In reaching this conclusion, Sochor asserts

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24 The record below reflects Sochor did not preserve this issue at trial and therefore he was precluded from asserting the "heinous, atrocious and cruel" [hereinafter cited as HAC] argument before the Florida Supreme Court on direct appeal. In *Sochor v. State*, 580 So.2d 595, 602, 603, n.10 (Fla. 1991), the court held that "[n]one of the complained-of jury instructions were objected to at trial, and, thus, they are *not preserved for appeal.*" The court further observed "[i]n any event, Sochor's claims here have no merit."

The Florida Supreme Court routinely applies procedural bar to claims not preserved at trial. The court, citing to *Vaught v. State*, 410 So.2d 147 (Fla. 1982), so held *sub judice*, and has not deviated from this practice as it would apply to the failure to "provide the jury with complete instructions on aggravating and mitigating circumstances in that the instructions did not reflect the refinements provided by the decisions of this Court. Since Appellant made no objection to the instructions below, this point may not be raised on appeal." 410 So.2d at 150. *See also* Fla.R.Crim.P. 3.390(d) and *McCaskill v. State*, 344 So.2d 1276 (Fla. 1977); *Gunsby v. State*, 574 So.2d 1085, 1089 (Fla. 1991) (felony murder instruction given-no evidence to support-no objection-not preserved); *Clark v. State*, 363 So.2d 331, 333 (Fla. 1978), (unless error amounts to fundamental error [*Ray v. State*, 403 So.2d 956, 960 (Fla. 1981)] objection at trial necessary to preserve claim for appellate review.) *Bottoson v. State*, 443 So.2d 962 (Fla. 1983); *Ford v. Wainwright*, 451 So.2d 471 (Fla. 1984).

Rule 3.390(d), Fla.R.Crim.P. provides in material part:

> No party may assign as error grounds of appeal the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict....

that the instruction used in his case violates *Maynard v. Cartwright*, 486 U.S. 356 (1988), and *Shell v. Mississippi*, 498 U.S. ____, 111 S.Ct. 313 (1990), if, in Florida, the jury is the actual sentencer. If the jury is not the actual sentencer but rather, as provided by 921.141, Fla.Stat., the trial judge is the sentencer, Sochor argues his sentence violates *Walton v. Arizona*, 497 U.S. ____, 110 S.Ct. 3047 (1990), because the trial court *sub judice* and the Florida Supreme Court, in a number of decisions, has long deviated from the narrowing construction affirmed in *Proffitt v. Florida*, 428 U.S. 242 (1976) (plurality opinion). He contends the trial court did not employ the "*Proffitt* construction" and the Florida Supreme Court did not make its own determination or apply

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Beyond peradventure, the Florida Supreme Court, in *Sochor*, determined that the jury instruction issue "that HAC was improper" was procedurally barred. Only alternatively, did the court note in passing that the claim had "no merit", and was then rejected without discussion." 580 So.2d at 603. Sochor conceded this fact in his reply brief in the Florida Supreme Court.

The claims of whether Florida applies its HAC aggravating factor in a constitutional manner based on the instruction given, is not properly before the Court since it was not preserved below. The *only* question preserved by Sochor on appeal was whether the HAC aggravating factor was proven beyond a reasonable doubt. The Florida Supreme Court concluded that the "evidence also supports finding that the murder was especially heinous, atrocious or cruel...." 580 So.2d 603.

Terminally, Sochor's insistence that the Florida Supreme Court abandoned the need for a timely objection to the instruction with specificity is not supported by the court's decision in *Smalley v. State*, 546 So.2d 720, 722 (Fla. 1989). The court concluded, although *not preserved* in that case, that the issue should be put to "rest" for all cases.

a harmless error analysis. Sochor specifically asserts that the aggravating factor of "heinous, atrocious or cruel" is applied in a standardless, erratic fashion and therefore, its application in Florida is unconstitutional.[25]

A statute is vague and therefore in violation of the Eighth Amendment if it fails to adequately inform the sentencing body "what [it] must find to impose the death penalty." *Maynard v. Cartwright,* 486 U.S. 356 (1988). Sochor points to *Maynard* and argues that the Florida Supreme Court has failed to set forth a standard by which it evaluates the appropriateness of a trial court's finding that a murder is

25 The heinous, atrocious, or cruel aggravating factor has always been a part of Florida's "statutory aggravating factor" list. The Florida Legislature in drafting this "catchall" provision no doubt intended to insure that only the most egregious of murders would qualify, and indeed, that result is borne out by the nature of the murders for which death is ultimately imposed. *See: Hoffman,* ***On the Perils of Line Drawing: Juveniles and the Death Penalty,*** 40 Hastings Law Journal 229, 278-279 (1989).

heinous, atrocious or cruel.[26] Sochor contends that if the trial judge is the sentencer in Florida, *Walton, supra,* is violated under Florida's sentencing scheme because the application of the aggravating circumstance of heinous, atrocious or cruel, has long deviated from the narrowing construction ratified in *Proffitt v. Florida,* 428 U.S. 242 (1976) and because the trial court, as well as the Florida Supreme Court, did not employ a narrowing construction. In sum, he concludes that there is no standard as mandated by *Walton* and thus the application of heinous, atrocious or cruel in Florida is unconstitutional.

26 Respondent has reviewed 469 direct appeal decisions rendered in capital cases by the Florida Supreme Court between January 1980 and January 1992. (Appendix A). To be sure these numbers only represent the tip of the iceberg of the number of homicides that were committed and prosecuted in Florida during this same period. As a result of the review undertaken it becomes quite apparent, early on, that there has "always" been a winnowing of the "heinous, atrocious, or cruel" factor in Florida by both the trial judges in their findings of aggravation to support the death penalty and the Florida Supreme Court in its appellate role.

No specific statistical data has been generated however, because the information was gleaned from reported Supreme Court decisions and no attempt was made to review the records for specific facts not reported in the decisions. In most instances where a new trial was ordered, the Florida Supreme Court did not discuss the penalty phase of a given case. In judicial override opinions where a life sentence was imposed by the Florida Supreme Court, the court has not always fully discussed the aggravation found by the trial court since the emphasis or focus normally is directed toward what mitigation should have been found or "could" have been found by the trial court in light of the jury's recommendation.

The amicus brief of The Volunteer Lawyers Resource Center of Florida, Inc., provides an appendix at the end of their pleading which cites per year those cases where the "trial court" found HAC. The amicus does not explain whether in the cases cited by year, the Florida Supreme Court concurred with said findings. In determining whether a narrowing standard is used, one necessarily must also look to the cases where the factor was or was not found and why. Respondent's appendix attempts to set forth the information contained in the Supreme Court's decision as to the trial court's findings and the Supreme Court's review as to whether HAC was upheld.

In *Lewis v. Jeffers,* 497 U.S. ____, 111 L.Ed.2d 606, 622 (1990), the Court summarized its decision in *Walton* as follows:

> ...Walton thus makes clear that if a state has adopted a constitutionally narrow construction of a facially vague aggravating circumstance, and if the state has applied that construction to the facts of the particular case, then the 'fundamental constitutional requirement' of 'channeling and limiting'...the sentencer's discretion in imposing the death penalty,' *Cartwright,* 486 U.S. at 362, 100 L.Ed.2d 372, 108 S.Ct. 1853, has been satisfied....

This Court, in *Walton,* faced with a similar challenge to the instant claim, noted:

> *Maynard v. Cartwright* and *Godfrey v. Georgia,* however, are distinguishable in two constitutionally significant respects. First, in both *Maynard* and *Godfrey,* the defendant was sentenced by a jury and the jury either was instructed only in the bare terms of the relevant statute or in terms nearly as vague. (cites omitted). Neither jury was given a constitutional limiting definition of the challenged aggravating factor. Second, in neither case did the state appellate court, in reviewing the propriety of the death sentence, purport to affirm the death sentence by applying a limiting definition of the aggravating circumstance to the facts presented. (cite omitted). These points were critical to the conclusion we reached in *Maynard.* (cite omitted). They are equally critical to our decision in this case.

111 L.Ed.2d at 528.

Florida, like Arizona, requires the trial judge to sentence. Distinguishing both Oklahoma's and Georgia's death penalty schemes the Court held:

> [B]ut the logic of those cases has no place in the context of sentencing by a trial judge. Trial judges are presumed to know the law and to apply it in making their decisions. If the Arizona Supreme Court has narrowed the definition of the 'especially heinous, cruel or depraved' aggravating circumstance, we presume that Arizona trial judges are applying the narrower definition. It is irrelevant that the statute itself may not narrow the construction of the factor. Moreover, even if a trial judge fails to apply the narrowing construction or applies an improper construction, the Constitution does not necessarily require that a state appellate court vacate a death sentence based on that factor. Rather, as we held in *Clemons v. Mississippi,* 494 U.S. ____, 108 L.Ed.2d 725, 110 S.Ct. 1441 (1990), a state appellate court may itself determine whether the evidence supports the existence of the aggravating circumstance as properly defined or the court may eliminate consideration of the factor altogether and determine whether any remaining aggravating circumstances are sufficient to warrant the death penalty.

111 L.Ed.2d at 528.

The Court went on to note:

> The Arizona Supreme Court's construction also is similar to the construction of Florida's 'especially heinous, atrocious or cruel' aggravating circumstance that we approved in *Proffitt v. Florida,* 428 U.S. at 255-256, 49 L.Ed.2d 913, 96 S.Ct. 2960. Recognizing that the proper degree of definition of

> an aggravating factor of this nature is not susceptible of mathematical precision, we conclude that the definition given to the 'especially cruel' provision by the Arizona Supreme Court is constitutionally sufficient because it gives meaningful guidance to the sentencer. Nor can we fault the state court's statement that a crime is committed in a 'especially depraved' manner when the perpetrator 'relishes the murder, evidencing debasement or perversion,' or 'shows an indifference to the suffering of the victim and evidences a sense of pleasure' in the killing. *See* 159 Ariz. at 587, 769 P.2d at 1033.

111 L.Ed.2d at 529.

In *Proffitt v. Florida,* 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913, 924-925 (1976), the Court affirmed the Florida Supreme Court's interpretation of especially heinous, atrocious or cruel found in *State v. Dixon,* 283 So.2d 1, 9 (Fla. 1973).[27] The Court further noted in footnote 12:

> The Supreme Court of Florida has affirmed death sentences in several cases, including the instant case, where this eighth statutory aggravating factor was found, without specifically stating that the homicide was 'pitiless' or 'torturous' to the victim. *See, e.g., Hallman v. State,* 305 So.2d 180 (1974) (victim's throat slit with broken bottle); *Spinkellink*

27 *Maynard v. Cartwright, supra,* in *Walton v. Arizona,* 111 L.Ed.2d at 529, citing the Court "expressed approval of a definition that would limit Oklahoma's 'especially heinous, atrocious, or cruel' aggravating circumstance to murders involving 'some kind of torture or physical abuse,'..." The court went on to state that "such a construction was not the only one 'that would be constitutionally acceptable,'" and then noted that Arizona's aggravating circumstance "is virtually identical" to the one approved of in Oklahoma.

> *v. State,* 313 So.2d 666 (Fla. 1975) ('career criminal' shot sleeping traveling companion); *Gardner v. State,* 313 So.2d 675 (Fla. 1975) (brutal beating and murder); *Alvord v. State,* 322 So.2d 533 (Fla. 1975) (three women killed by strangulation, one raped); *Douglas v. State,* 328 So.2d 18 (Fla. 1976) (depraved murder); *Henry v. State,* 328 So.2d 430 (Fla. 1976) (torture murder); *Dobbert v. State,* 328 So.2d 433 (Fla. 1976) (torture and killing of two children). *But the circumstances of all of these cases could accurately be characterized as 'pitiless' and 'unnecessarily torturous,' and it thus does not appear that the Florida court has abandoned the definition that it announced in* ***Dixon*** *and applied in* ***Alford, Tedder,*** *and* ***Halliwell.***

Proffitt v. Florida, 49 L.Ed.2d at 924-925. (emphasis added).

Indeed, the Florida Supreme Court has steadfastly relied on its "polestar" decision[28] in *State v. Dixon, supra,* regarding the application of this aggravating factor.[29] In *Lewis v. State,* 398 So.2d 432, 438 (Fla. 1981), the Florida Supreme Court opined:

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28 In *State v. Gretzler,* 659 P.2d 1 (Ariz. 1983), Arizona's seminal decision regarding the "especially heinous, atrocious, cruel or depraved" aggravating factor, the Court prescribed certain characteristics that could make up this factor. Lower courts were to be guided by these factors but not compelled to specifically address each. In *Gretzler, supra,* factors indicating heinousness or depravity were 1) relishing the murder; 2) infliction of gratuitous violence above that necessary to complete objectives of the crime; 3) mutilation of the corpse; 4) senselessness of crime, and 5) helplessness of the victim.

With regard to the "cruelty" aspect of this factor, the *Gretzler* court concluded that it must be proven beyond a reasonable doubt the victim consciously suffered mental anguish or physical pain prior to death. *State v. Gretzler,* 659 P.2d at 10.

This Court, in *Walton v. Arizona,* 111 L.Ed.2d at 529, had no particular difficulty in concluding Arizona had "a proper degree of definition of an aggravating factor "because it" gives meaningful guidance to the sentencer...."

Similarly, the Florida Supreme Court has produced a body of caselaw based on the teachings of *State v. Dixon, supra,* and *Proffitt, supra,* which constitutes a "proper degree of definition" to give "meaningful guidance to the sentencer."

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29 *Proffitt v. Florida, supra,* set into stone the *State v. Dixon, supra,* definition. Early cases reflect, such as *Hargrave v. State,* 366 So.2d 1, 5 (Fla. 1978), that an execution-style shooting would constitute extremely wicked and shockingly evil conduct. The Florida Supreme Court later recognized in cases such as *Jones v. State,* 411 So.2d 165, 169 (Fla. 1982), that execution-style murder (shot at point blank range), might not always neatly fall within this factor.

In July 1979, 921.141(5)(i), Fla.Stat., became effective. This "evolutionary" aggravating factor carved out as a separate factor more closely addresses the "one shot", execution-style murder. *See Pope v. State,* 441 So.2d 1073, 1077-1078 (Fla. 1983). Specifically, 921.141(5)(i), provides:

> (i) The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

The Florida Supreme Court, in *Rogers v. State,* 511 So.2d 526 (Fla. 1987), refined this factor even more narrowly. *See Banda v. State,* 536 So.2d 221 (Fla. 1988); and *Dougan v. State,* ____ So.2d ____ (Fla. January 2, 1992), 17 F.L.W. S10, wherein the court found both HAC and cold, calculated and premeditated aggravating factors proven beyond a reasonable doubt. The facts found by the court reflect:

> Eventually, the five men [Dougan included] drove towards Jacksonville Beach, where they picked up a white hitchhiker, 18-year-old Stephen Anthony Orlando. Against Orlando's will and over his protest, they drove him to an isolated trash dump, ordered him out of the car, stabbed him repeatedly, and threw him to the ground. As the 18-year-old youth writhed in pain and begged for his life, Dougan put his foot on Orlando's head and shot him twice — once in the chest and once in the ear — killing him instantly.

Dougan, slip opinion, page 3.

The Court noted that Dougan bragged about the murder — he made tape recordings and sent the recordings to the victim's family and media. The Court concluded:

> The facts also set this murder apart from the norm of killing by illustrating the victim's suffering and Dougan's indifference to the victim's pleas and support finding the heinous,

The trial court judge based his finding that the murder was heinous, atrocious and cruel on the fact that the murder was premeditated, cold and calculated, and stealthily carried out. Early in the history of the capital felony sentencing law, this Court provided an interpretation of this statutory factor. 'What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crimes apart from the norm of capital felonies — the consciousless or pitiless crime which is unnecessarily torturous to the victim.' *State v. Dixon*, 283 So.2d 1, 9 (Fla. 1973), *cert. denied*, 416 U.S. 943, 94 S.Ct. 1950, 40 L.Ed.2d 295 (1974). Under this standard, a murder by shooting, when it is ordinary in the sense that it is not set apart from the norm of premeditated murders, is as a matter of law not heinous, atrocious or

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atrocious, or cruel aggravator. *Cf. Ponticelli v. State*, No. 73,064 (Fla. October 10, 1991), and cases cited therein. Finally, the planning and execution of this murder demonstrates the heightened premeditation needed to find it had been committed in a cold, calculated and premeditated manner. *Cf. Cruse v. State*, No. 74,656 (Fla. October 24, 1991); *Rogers*. As discussed later, Dougan had no colorable claim of any moral or legal justification for this killing.

Dougan, slip opinion, page 9.

In *In Re Standard Jury Instructions Criminal Cases*, No. 90-1, 579 So.2d 75 (Fla. 1991), the Supreme Court Committee on Standard Jury Instructions (Criminal) again reinforced the jury instruction governing HAC in providing:

> The committee has decided that the additional language, which is based on *State v. Dixon*, 383 So.2d 1 (Fla. 1973), improves the instruction and that it adequately addresses any problem the paragraph may present in light of *Maynard v. Cartwright*, 486 U.S. 356, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988).

> cruel. (cites omitted). We hold, therefore, that the finding of this factor was erroneous.

398 So.2d at 438.

In *Clark v. State*, 443 So.2d 973, 977 (Fla. 1983), citing *State v. Dixon, supra*, the court found that the murder therein was not especially heinous, atrocious or cruel, in spite of the fact that the Court noted helpless anticipation of impending death may serve as a basis for this factor. The Court found no evidence to prove Mrs. Sattey "knew more than an instant" what was about to happen to her. *See also Gorham v. State*, 454 So.2d 556, 559 (Fla. 1984), (while murder unjustified, no evidence of "prolonged or torturous captivity"); *Bundy v. State*, 471 So.2d 9 (Fla. 1985), (absent evidence twelve-year-old female victim "struggled with abductor, experienced extreme fear or apprehension, or was sexually assaulted before death", it was error to find this factor); *Mills v. State*, 476 So.2d 172, 178 (Fla. 1985), (in considering this factor, "must look to the act itself that brought about the death"); *Jackson v. State*, 498 So.2d 906, 910 (Fla. 1986), citing *State v. Dixon, supra*, and *Proffitt v. Wainwright*, 685 F.2d 1227 (11th Cir. 1982) (interpreting Florida law), *cert. denied*, 464 U.S. 1002 (1983).

In *Cochran v. State*, 547 So.2d 928, 931 (Fla. 1989), the Florida Supreme Court disallowed the heinous, atrocious and cruel aggravating factor, observing:

> We agree with appellant that this finding does not comport with prior decisions of this Court defining the parameters of the heinous, atrocious or cruel aggravating factor. Lack of remorse is clearly improper as an aggravating factor or enhancement of an aggravating factor. *Pope v. State*, 441 So.2d 1073 (Fla. 1983). Failure to get medical attention for the victim does not make a murder especially heinous, atrocious or cruel. *Teffeteller v. State*, 439

> So.2d 840, 846 (Fla. 1983), *cert. denied,* 465 U.S. 1074, 104 S.Ct. 1430, 79 L.Ed.2d 754 (1984); *Tedder v. State,* 322 So.2d 908, 910 (Fla. 1975). Nor can the defendant's acts after the victim is unconscious support this aggravating factor. (cites omitted). Our cases make clear that where, as here, death results from a single gunshot and there are no additional acts of torture or harm, this aggravating circumstance does not apply....

547 So.2d at 931.

In *Smalley v. State,* 546 So.2d 720 (Fla. 1989), the Florida Supreme Court, faced with repeated assertions that the aggravating circumstance of heinous, atrocious or cruel was unconstitutionally vague under the Eighth and Fourteenth Amendments to the United States Constitution, disregarded Smalley's failure to object and addressed the matter, "in order to set the issue at rest." 546 So.2d at 722. The court observed:

> It is true that both the Florida and Oklahoma capital sentencing laws use the phrase 'especially heinous, atrocious or cruel.' However, there are substantial differences between Florida's capital sentencing scheme and Oklahoma's. In Oklahoma, the jury is the sentencer, while in Florida, the jury gives an advisory opinion to the trial judge, who then passes sentence. The trial judge must make findings that support the determination of all aggravating and mitigating circumstances. Thus, it is possible to discern upon what facts the sentencer relied in deciding that a certain killing was heinous, atrocious or cruel.
>
> This Court has narrowly construed the phrase 'especially heinous, atrocious or cruel' so that it has a more precise meaning than the same phrase

had in Oklahoma. In *State v. Dixon,* 283 So.2d 1, 9 (Fla. 1973), *cert. denied,* 416 U.S. 943, 94 S.Ct. 1950, 40 L.Ed.2d 295 (1974), we said:

> It is our interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies — the consciousless or pitiless crime which is unnecessarily torturous to the victim.

It was because of this narrowing construction that

> the Supreme Court of the United States upheld the aggravating circumstance of heinous, atrocious or cruel against a specific Eighth Amendment vagueness challenge in *Proffitt v. Florida,* 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976). Indeed, this Court has continued to limit the finding of heinous, atrocious or cruel to those consciousless or pitiless crimes which are unnecessarily torturous to the victim. (cites omitted). That *Proffitt* continues to be good law today is evident from *Maynard v. Cartwright,* wherein the majority distinguished Florida's sentencing scheme from those of Georgia and Oklahoma. *See Maynard v. Cartwright,* 108 S.Ct. at 1859.

Smalley v. State, 546 So.2d at 722.

More recently, in *Shere v. State,* 579 So.2d 86 (Fla. 1991), the Florida Supreme Court, again citing to *Dixon,* held that the instant murder did not rise to a torturous murder that evinces extreme and outrageous depravity exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another. *See Cheshire v. State,* 568 So.2d 908, 912 (Fla. 1990).

The trial courts, as well as the Florida Supreme Court, frequently find that the aggravating factor that the murder was committed in a heinous, atrocious or cruel manner is accompanied by additional acts of a pitiless nature unnecessarily torturous to the victim or victims.[30] *See Hildwin v. State,* 531 So.2d 124 (Fla. 1988), where an abduction was involved, the court has found the murder may be heinous, atrocious or cruel (victim abducted, raped, slowly strangled); *Bryan v. State,* 533 So.2d 744 (Fla. 1988) (victim kidnapped, held in fear for life for four hours, taken to isolated area, marched to creek bank where he begged not to be crippled, struck and then shot with a shotgun blast to the face); *Parker v. State,* 476 So.2d 134 (Fla. 1985) (victim told by defendant that he was going to kill her, driven seventeen miles, dragged by the hair, stabbed and shot execution-style); *Mendyk v. State,* 545 So.2d 846 (Fla. 1989) (victim kidnapped, raped and toyed with); *Preston v. State,* 444 So.2d 939 (Fla. 1984) (victim driven a mile and a half, required to walk some five hundred feet and then throat slashed); *Copeland v. State,* 457 So.2d 1012 (Fla. 1984) (victim's ordeal lasted hours, kidnapped, raped, and then shot); *Koon v. State,* 513 So.2d 1253 (Fla. 1987) (victim beaten, forced into a car, and then executed); *Swafford v. State,* 533 So.2d 270 (Fla. 1988) (victim abducted, sexually battered and then shot); *Duckett v. State,* 568 So.2d 891 (Fla. 1990) (law enforcement officer strangled and then eleven-year-old girl abducted and drowned after sexually abused).

Heinous, atrocious and cruel also may be found when beatings have occurred, resulting in the murder. *See Cherry v. State,* 544 So.2d 184 (Fla. 1989) (victim beaten and killed by blow to the head); *Chandler v. State,* 534 So.2d 701 (Fla. 1988) (elderly couple abducted from home and beaten to death in each other's presence); *Lamb v. State,* 532 So.2d 1051 (Fla. 1988) (victim sustained defensive wounds, struck

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30 Sochor points to the decision in *Vaught v. State,* 410 So.2d 147 (Fla. 1982) stating "[i]n 1982, the court disapproved narrowing *State v. Dixon,* limitations, *Vaught v. State,* (cite omitted) (specifically rejecting claim, based on State v. Dixon, that circumstance focuses on infliction of physical pain or anguish), and in 1984, it removed the constitutionally approved construction. *Pope,* 441 So.2d at 1077-78 ...." (Sochor's brief at p.44.)

Such a bold statement is unsupported by the authorities cited. In *Vaught v. State, supra,* the Court observed that a spontaneous shooting and near instantaneous death therefrom did not fall within the Court's interpretation of "mental anguish" or "physical pain." The Court concurred however, that the facts supported what *thus far* had otherwise been considered an "execution-style" or "cold calculated" murder under HAC. *Vaught,* 410 So.2d at 151. *Vaught's* crime occurred in 1977, prior to the creation of § 921.141(5)(i), Fla.Stat., (the cold, calculated premeditated murder without the pretense of legal justification).

In *Pope v. State,* 441 So.2d 1073 (Fla. 1983) the Court acknowledged the creation of § 921.141(5)(i), Fla.Stat., *Pope,* 441 So.2d at 1078, n.2, and held that a lack of remorse *was not* an independent aggravating factor "in and of itself."

> "...we hold that henceforth lack of remorse should have no place in the consideration of aggravating factors. Any convincing evidence of remorse may properly be considered in mitigation of the sentence, but absence of remorse should not be weighed either as an aggravating factor nor as an enhancement of an aggravating factor." *Pope,* 441 So.2d at 1078.

The Court acknowledged that a new jury instruction resulting from those adopted by the 1981 revised jury instructions (criminal) called for a jury instruction that "[t]he crime for which the defendant is to be sentenced was especially wicked, evil, atrocious or cruel." "Thus we find *any* consideration of defendant's remorse extraneous to the question of whether the murder of which he was convicted was especially heinous, atrocious or cruel." 441 So.2d at 1078. (emphasis added)

six times in head with claw hammer, did not die instantaneously); *Roberts v. State,* 510 So.2d 885 (Fla. 1987) (victim sustained several blows to the head and had multiple defensive wounds); *Scott v. State,* 494 So.2d 1134 (Fla. 1986) (victim beaten, driven around and then beaten again before killed).

This aggravating factor has been sustained when fear and anguish precedes a victim's death. *See Routly v. State,* 440 So.2d 1257 (Fla. 1983); *Steinhorst v. State,* 412 So.2d 332 (Fla. 1982); *Adams v. State,* 412 So.2d 850 (Fla. 1982); *White v. State,* 403 So.2d 331 (Fla. 1981); *Francis v. State,* 473 So.2d 672 (Fla. 1985) (victim forced to crawl on knees and beg for life, placed on toilet stool for two hours, Draino injected, begged for life); *Turner v. State,* 530 So.2d 45 (Fla. 1987) (victim pursued into phone booth, cut and stabbed to death, pleas for mercy); *Morgan v. State,* 415 So.2d 6 (Fla. 1982) (ten stab wounds, victim's statement that 'I'll pay you' before he was killed demonstrated awareness of impending death); *Melendez v. State,* 498 So.2d 1258 (Fla. 1986) (victim's throat slit, shot, victim knew of impending death); *Cooper v. State,* 492 So.2d 1059 (Fla. 1986) (victim aware of impending death, bound, gun misfired three times, pleaded for life); *Huff v. State,* 495 So.2d 145 (Fla. 1986) (victim tried to block shot to face, aware that victim's own son was murderer); *Kokal v. State,* 492 So.2d 1317 (Fla. 1986) (victim marched to execution site, beaten, shot after begging for mercy); *Smith v. State,* 515 So.2d 182 (Fla. 1987) (eight-year-old brutally raped, sodomized and beaten to death with rock).

The Florida Supreme Court has also found that death as a result of multiple stab wounds can constitute a torturous, pitiless murder. *See Haliburton v. State,* 561 So.2d 248 (Fla. 1990) (victim sustained thirty-one stab wounds on cheek, neck, arms and scrotum); *Floyd v. State,* 497 So.2d 1211 (Fla. 1986) (victim lived for four minutes after being stabbed

twelve times, many defensive wounds); *Hansborough v. State,* 509 So.2d 1081 (Fla. 1987) (many of the thirty or more stab wounds were defensive wounds); *Duest v. State,* 462 So.2d 446 (Fla. 1985) (eleven stab wounds, victim languished before dying); *Lusk v. State,* 446 So.2d 1038 (Fla. 1984) (victim received three stab wounds and bled to death), and *Breedlove v. State,* 413 So.2d 1 (Fla. 1982) (victim stabbed and did not die immediately).

The Florida Supreme Court has also found this aggravating factor may be applicable where death by strangulation has occurred. *See Dudley v. State,* 545 So.2d 857 (Fla. 1989) (victim strangled and throat cut); *Adams v. State,* 412 So.2d 850 (Fla. 1982) (eight-year-old victim screaming then strangled to death); *Tompkins v. State,* 502 So.2d 415 (Fla. 1986) (not instantaneous, victim struggled and was ultimately strangled to death); *Alvord v. State,* 322 So.2d 533 (Fla. 1975) (three victims bound, sexually assaulted and strangled to death); *Deaton v. State,* 480 So.2d 1279 (Fla. 1985) (victim strangled to death with an electrical cord), and *Sochor v. State,* 580 So.2d 595 (Fla. 1991) (victim struggled, choked to death); *Holton v. State,* 573 So.2d 284, 292 (Fla. 1990):

> The victim's death by strangulation accomplished by a ligature tied around her neck was sufficient to support the finding of this factor. This Court previously has stated that it can be inferred 'that strangulation, when perpetrated on a conscious victim, involves foreknowledge of death, extreme anxiety and fear, and that this method of killing is one to which the factor heinousness is applicable.' (cites omitted).

The Florida Supreme Court has also upheld the heinous, atrocious and cruel aggravating factor where, in *Thompson v. State,* 389 So.2d 197 (Fla. 1980), (the court found that the

victim died from torture); *Harvey v. State,* 529 So.2d 1083 (Fla. 1988) (elderly victims accosted in home, overheard discussions of how they were to be killed and then shot when they tried to run away); *Buenoano v. State,* 527 So.2d 194 (Fla. 1988) (victim died from slow arsenic poison); *Way v. State,* 496 So.2d 126 (Fla. 1986) (victims set afire and burned alive as they were screaming and moving in garage), and *Lightbourne v. State,* 438 So.2d 380 (Fla. 1983) (victim suffered unnecessarily torturous death).[31]

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31 To be sure not all cases where HAC has been found by the trial court have passed appellate scrutiny. The following is merely a sample of the types of cases where HAC has failed to satisfy appellate muster. In *Rivera v. State,* 545 So.2d 864 (Fla. 1989) (police officer shot three times within 16 seconds, died immediately thereafter); *Scull v. State,* 533 So.2d 1137 (Fla. 1988) (single blow to the head); *Bundy v. State,* 471 So.2d 9 (Fla. 1985) (no evidence victim struggled or experienced fear, not sexually assaulted); *Herzog v. State,* 439 So.2d 1372 (Fla. 1983) (acts done to unconscious or semiconscious victim); *Burns v. State,* ___ So.2d ___ (Fla. May 16, 1992), 16 F.L.W. S389 (rehearing granted on another issue) (one gunshot wound-law enforcement officer-not HAC); and *Santos v. State,* ___ So.2d ___ (Fla. September 26, 1991), *reh'g denied* January 23, 1992), 16 F.L.W. S633 (domestic violence case-killed woman he lived with and their daughter-woman holding child, ran from defendant, he caught her spun her around-shot her twice, child once). The court held:

> We also agree that this crime was not heinous, atrocious, or cruel. As we recently explained in *Cheshire v. State,* 568 So.2d 908 (Fla. 1990), this factor is appropriate in torturous murders involving extreme and outrageous depravity. A murder may fit this description if it exhibits a desire to inflict a high degree of pain or an utter indifference to or enjoyment of the suffering of another. *Id.* at 912. The torture-murder in *Douglas,* which involved heinous acts extending over four hours, illustrates a case in which this factor was appropriately found. *Douglas,* 575 So.2d at 166. The present murders happened too quickly and with no substantial suggestion that Santos intended to inflict a high degree of pain or otherwise torture the victims. Accordingly, the trial court erred in finding this factor to be present.

16 F.L.W. at S634.

As observed in *Sanchez-Velasco v. State,* 570 So.2d 908 (Fla. 1990) (the first degree murder and sexual battery of a twelve-year-old girl):

> ...[w]e have previously addressed the claim that the aggravating circumstance of heinous, atrocious, or cruel is impermissibly vague and does not provide the jury with enough guidance. This Court has expressly limited the definition of this aggravating factor in our opinion in *State v. Dixon* (cite omitted). Moreover, the use of this aggravating circumstance by the trial judges, who are the actual sentencers in Florida, has been specifically approved. *See Hildwin v. State,* 531 So.2d 124 (Fla. 1988), *aff'd,* 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989). We note that the trial court not only found the aggravating circumstance of heinous, atrocious or cruel, but also expressly set forth in the record, the justification for such a finding. Further, we find that the claim that the factor was not established beyond a reasonable doubt is totally without merit. Substantial evidence was presented during the guilt and penalty phases to establish the aggravating factor, including the rape evidence, which was properly considered during the penalty phase.

Similarly, in the instant case, the trial court, armed with a standard that has existed in Florida since 1976, set forth in *State v. Dixon, supra,* concluded:

While similarities may always be found when one compares decisions, and results at first blush appear conflicting, the concerns to be addressed do not call for a perfect system or standard, rather it calls for a system or standard that is free from wanton and freakish imposition. *McCleskey v. Kemp,* 481 U.S. 279 (1987), and *Pulley v. Harris,* 465 U.S. 37 (1984).

The court finds, according to Florida Statute 921.141(5)(h), that the capital felony was especially, heinous or cruel. The evidence indicated that the victim was forcibly removed from the truck while she pleaded for help and even begged for her life. Even though Patricia Gifford's body was never recovered and no one knows how badly she was beaten, the defendant admitted in his statements that as he choked her, she resisted and fought him. There were several fingernail marks on his face which substantiates that violent struggle ensued as confirmed by the defendant's statements to the police officers. Dr. Wright testified that asphyxiation is a slow and painful death. Fear and emotional trauma preceding the victim's death may be considered as contributing to the heinous nature of the capital felony. It is clear there was fear and definitely emotional trauma before her death.

(TR 1232-1233).

The Florida Supreme Court, in concurring that this aggravating factor existed and was proven beyond a reasonable doubt, held in *Sochor v. State,* 580 So.2d at 603:

> The evidence also supports the finding that the murder was especially heinous, atrocious, or cruel. Fear and emotional strain can contribute to the heinousness of the murder. *Adams,* 412 So.2d at 857. Gary testified that the victim screamed for help after she was dragged from the truck and scratches on Sochor's face indicate that a struggle took place. The evidence supports a conclusion of horror and contemplation of serious injury or death by the victim. Moreover, Sochor confessed that he choked the victim to death. It can be inferred that 'strangulation, when perpetrated upon a conscious victim, involves foreknowledge of death, extreme anxiety and fear and that this method of killing is one to which the factor of heinousness is applicable.' *Tompkins v. State,* 502 So.2d 415, 421 (Fla. 1986) (citations omitted), *cert. denied,* 483 U.S. 1033, 107 S.Ct. 3277, 97 L.Ed.2d 781 (1987). *Accord Johnson v. State,* 465 So.2d 499 (Fla.), *cert. denied,* 474 U.S. 865, 106 S.Ct. 186, 88 L.Ed.2d 155 (1985); *Doyle v. State,* 460 So.2d 353 (Fla. 1984). The trial court properly found this aggravating factor.

The trial court, as well as the Florida Supreme Court, correctly applied § 921.141(5)(h), Fla.Stat., to Sochor's case.[32]

The history of this aggravating factor and its application in Florida capital cases beyond question satisfy the guidance test announced in *Walton v. Arizona, supra.* Because Florida is a judge sentencing state, the concerns expressed in *Maynard v. Cartwright, supra,* do not exist *sub judice. Smalley v. State, supra.* There is a clear narrowing of this

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32 The jury instruction that was read provides that the aggravating factors you may consider are limited:

> 8. The crime for which the defendant is to be sentenced was especially wicked, evil, atrocious or cruel.

(TR 221).

While pretrial, defense counsel raised some concern as to the constitutionality of a number of aspects of Florida's death penalty, *no* objection was raised at trial regarding this instruction. Albeit, defense counsel *at trial* might not have been successful in convincing the trial court to provide a more "expansive" instruction regarding the HAC instruction, we will never know. The instant case is not like *Ford v. Georgia,* ___ U.S. ___, 111 S.Ct. 850 (1991). The Respondent and the state court were entitled to a timely and specific objection as to the instruction provided. Moreover, it would appear no procedural bar plagued the issue in the *Maynard v. Cartwright* case or for that matter, *Walton v. Arizona, supra.*

aggravating factor by both the trial judges as well as the Florida Supreme Court in its appellate review. The Florida Supreme Court's conclusion that this aggravating factor was appropriately found beyond a reasonable doubt must be affirmed.[33]

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33 Terminally, Respondent would also point to the conclusion drawn in *Walton v. Arizona*, 111 L.Ed.2d at 529-530, that:

> In effect Walton challenges the proportionality of the Arizona Supreme Court as erroneous and asks us to overturn it. This we decline to do, for we have just concluded that the challenged factor has been construed by the Arizona courts in a manner that furnishes sufficient guidance to the sentencer. This being so, proportionality review is not constitutionally required, and we lawfully may presume that [Walton's] death sentence was not 'wantonly and freakishly' imposed — and thus that the sentence is not disproportionate within any recognized meaning of the Eighth Amendment. (cites omitted). Furthermore, the Arizona Supreme Court plainly undertook its proportionality review in good faith and found that Walton's sentence was proportional to the sentence imposed in cases similar to his. The Constitution does not require us to look behind that conclusion.

Beyond a doubt, a similar result must be herein reached. The Supreme Court concluded that Sochor's case was proportionate and noted:

> Striking one aggravating factor when there are no mitigating circumstances does not necessarily require resentencing. (cites omitted). Under the circumstances of this case, and in comparison with other death cases, we find Sochor's sentence of death proportionate to his crime. *E.g., Hitchcock v. State*, 578 So.2d 685 (Fla. 1990); *Tompkins; Doyle*, 580 So.2d at 604.

See Holton v. State, 573 So.2d 284, 292 (Fla. 1990) and *Capehart v. State*, 583 So.2d 1009 (Fla. 1991) [trial court found four aggravating factor, HAC, CCP included plus one mitigating factor. Florida Supreme Court struck CCP — found HAC valid and affirmed. (victim's death caused by asphyxiation due to smothering)].

> "Ample evidence in the record regarding both the method of killing and the sexual assault and resulting internal trauma to the victim supports this circumstance. The medical examiner testified that the injuries to Reeves' sexual organs

CONCLUSION

Sochor's conviction and sentence of death should be affirmed.[34]

Respectfully submitted,

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> would have caused her pain. She also explained that death by smothering is not instantaneous, and the victim would have remained conscious for up to two minutes. During that time the victim would have experienced a foreknowledge of death as well as anxiety and fear. *Cf. Tompkins v. State*, 502 So.2d 415, 421 (Fla. 1986)(strangulation of conscious victim), *cert. denied*, 483 U.S. 1033, 107 S.Ct. 3277, 97 L.Ed.2d 781 (1987). Accordingly the trial court did not err in finding this circumstance."

583 So.2d at 1015.

34 Respondent has not focused on any of the alleged mitigation Sochor contends should have been found by either the trial court or the Florida Supreme Court. In accepting certiorari review, this Court declined to revisit that matter.

Case No. _____

In The

Supreme Court of the United States

October Term, 1988

DENNIS SOCHOR,

Petitioner,

v.

STATE OF FLORIDA,

Respondent

ON WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX A

BRIEF ON THE MERITS IN SUPPORT OF RESPONDENT

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*COUNSELS FOR RESPONDENT

STATEMENT OF THE CASE

The victim, Patricia Gifford, and her friend Delta Harville went to the Banana Boat Lounge on New Year's Eve, December 31, 1981. A mutual friend, Patricia Borman was tending bar at the lounge that evening. (R 36-44). Dennis Sochor, and his brother Gary were also there and began a conversation with the two young women. (R 83). Shortly after midnight, Delta became very ill and went to the ladies' room. Patricia accompanied her. Sochor stood outside the bathroom, calling for Patricia. (R 58-59). Patricia, with the assistance of the Sochor brothers, helped Delta to the car. JA 33. She told Delta that she would go pay their bar tab and be right back out to sit with her. Patricia did paid the tab, however she thereafter was never seen again. (R 44, 89, 99).

Gary Sochor testified that after they put Delta in the car, Patricia went willingly with the Sochor brothers ostensibly to get something to eat in the borrowed truck. The next thing Gary knew, the truck stopped and Patricia was screaming for help. JA 36. Gary exited the truck and Dennis was on the ground on top of Patricia. Gary attempted to stop Dennis by throwing a rock at him. Dennis told him to get back in the truck. Patricia screamed for help and begged for her life. JA 37, 92. Dennis returned to the truck approximately five minutes later, without Patricia. Gary never saw her after that. JA 39.

The next day Gary saw articles of woman's clothing and a set of car keys in the truck. JA 43-45. The description of the clothes matched the victim's clothing from the night before. Sochor admitted that the clothes belonged to the victim. (R 109, 421) JA 122-123, 128. Sochor had several scratches or gouges on his face, (R 260, 270), and he admitted that Patricia had scratched him during the struggle. JA 128. The wounds were still visible several days after the murder.

(R 300). Gary left later that day, New Year's Day, to go back to Michigan. JA 48.

When Delta woke the next morning, New Year's Day, still in her car, she realized Patricia was missing and called the police. (R 94). A picture of Patricia with the defendant appeared in the newspaper several days later. (R 194,303). Sochor disappeared after that. (R 303). Eventually the police were led to Gary Sochor. (R 204). On January 7, 1982, Gary returned to Florida to help find the body of Patricia Gifford. (R 204, 209-213). Gary told the police what had happened on New Year's Eve. (R 387-393) JA 50.

Sochor had been using his employer's truck around the time of the murder. On January 22, 1982, that truck was found in Tampa. (R 218, 240-243) JA 32, 122. Traces of blood and scratch marks were found on the passenger side of the truck. (R 292).

The investigation remained dormant until May 1986, when Dennis was arrested in Georgia. (R 395). Gary had not seen or heard from his brother Dennis again until he was arrested in Georgia. JA 53. Dennis Sochor came back to Florida with the police (R 412), and ultimately gave three taped statements admitting that he killed Patricia Gifford. (R 436-452) JA 99-167. Sochor stated that she refused his sexual advances. When attempting to fight him off, she scratched his face, which made him angry. He then confessed to choking Patricia to death. (R 413) JA 137-143, 156-157, 164. He saw his picture in the paper after the incident, became scared, and took off in his employer's truck. JA 137.

Dr. Zager and Dr. Ceros-Livingston were called for the defense. (R 641-739). Both testified that Sochor reported a long history of drug abuse and physical abuse by his mother. (R 648-649, 653, 699). Both stated that he was not psychotic and was legally sane at the time of the incident. (R 656, 703, 717, 735,739). Both testified that Sochor has an anti-social

personality disorder, and exhibited impulsive and destructive behavior. (R 656, 733). He has average intelligence and is reality based. (R 717). There was no history of any psychiatric hospitalization. (R 703). Dr. Zager further stated that Sochor would be dangerous if released. (R 676). Dr. Ceros-Livingston stated that Sochor's test scores indicated a "fake-bad" profile, evidencing an attempt by the defendant to appear mentally ill. (R 714).

A psychiatrist called by the State, Dr. Ricardo Castillo, testified that Sochor was suffering from selective amnesia, as he had difficulty in remembering any facts which were self-incriminating. (R 798). He also stated that Sochor has an anti-social personality. (R 799).

Dennis Sochor was convicted of first degree murder on October 20, 1987. (R 944, 1185). The penalty phase then began.

The first witness called by the State was Sochor's ex-wife, Patricia Neal. JA 196. She testified that Sochor became violent if she would refuse his sexual advances, consequently she usually submitted. JA 198. Ms. Neal was physically assaulted by Sochor on at least thirty occasions. JA 198.

Dr. Wright, the county medical examiner, testified that death by choking amounted to a compression of the neck structure. JA 210. Death is usually slow and painful. JA 211, 212. The pain associated with this manner of death was caused from a breaking, tearing, or bending of the neck structure. JA 212. There is fear associated with strangulation due to the gradual inability to breathe. JA 212. If the victim struggled, unconsciousness would occur after four minutes. JA 216.

Captain Mark Schlein of the Fort Lauderdale police testified regarding Sochor's confession to two prior sexual batteries. One took place in Michigan in May 1979 and the

other one occurred in Fort Lauderdale in March 1980. JA 217-226.

Vicki Russo, a detective with the Fort Lauderdale Police Department testified regarding the facts of the two prior rapes. In both instances, the victims were seen or met at a bar. The victim from Michigan agreed to give Sochor a ride home. He made sexual advances to her in the car and she resisted. He choked her into unconsciousness. When she awoke, he was in the process of raping her. The victim was taken back to Sochor's apartment where she was raped two more times. JA 210, 221-227.

The second rape occurred in Fort Lauderdale in March 1980. As the victim was getting into her car, Sochor came up behind her and forced his way into the car with her. He then drove to a secluded area of town. He ripped her clothes off and raped her. He became violent, viciously biting her sexual organs, because he was unable to ejaculate. She was repeatedly raped and physically threatened. JA 230-235, 222-226.

The State rested its case.

Sochor presented the testimony of four family members, including his parents, a sister, and his brother Gary. JA 241-301. They all stated that Sochor, one of ten siblings, was beaten more than any of the other children. His mother would physically abuse him. JA 241, 244, 255, 270. When Sochor's father was out of work, Dennis would hand over his pay check to help support the rest of the family. JA 244.

On cross-examination, all the witnesses admitted that Sochor was a violent child when growing up. He attacked one of his brothers, Brian, so badly that the police had to be called and Brian was hospitalized. JA 261, 265. Sochor also hit both of his parents. One such beating of his father resulted in the loss of a pint of blood. JA 285-287. Sochor's

family had not seem him for eleven years prior to the murder of Patricia Gifford. JA 255, 273.

During closing, Sochor's attorney claimed that the system had failed Dennis Sochor and that he should have received help for his personality troubles a long time ago. He further urged the jury to have mercy on Sochor as the death penalty was just a continuation of the violence. He claimed that Sochor's troubles with alcohol and his violent behavior was evidence of the mitigating factors that the crime was committed while he was under extreme mental or emotional disturbance, and that his ability to conform his conduct to the requirements of the law was substantially impaired. JA 312-326.

The jury returned an advisory sentence of death by a vote of ten to two. (R 1225). The judge submitted his written findings of fact in support of the sentence of death on November 2, 1987.[1] On direct appeal Sochor presented approximately twenty-five claims of alleged error. The Florida Supreme Court found no error as to the guilt phase. *Sochor v. State*, 580 So.2d 595, 599-603 (Fla. 1991). Regarding the sentencing phase, the Court sustained the trial court's findings that no mitigating evidence was established, *Sochor*, 580 So.2d at 603-604, and sustained the findings as to the three aggravating factors, *Id.*, at 603. The Court found insufficient evidence to establish that the murder was committed with a "heightened" level of premedita-

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1 The trial court found four aggravating factors: § 921.141(5)(b), that the defendant was previously convicted of a prior violent felony; § 921.121(5)(d), that the crime was committed while the defendant was engaged in the commission of a sexual battery or kidnapping; § 921.141(5)(h), that the capital felony was especially heinous, atrocious, and cruel; and § 921.141(5)(i), the crime was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. (R 1231-2133). The trial court considered and found no mitigating evidence, statutory or otherwise. JA 348-354.

tion. *Id.* The Court opined that it was more likely that Sochor committed the murder when the victim resisted his sexual advances. *Id.* The Court found that the error was harmless as that there remained three valid aggravators weighed against nothing in mitigation.[2] The convictions and death sentence were then affirmed. *Id.*[3] Sochor filed for certiorari review in this Court on September 19, 1991. The State responded on October 15, 1991. Review was granted on November 18, 1991.

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2 In conformity with Florida law, the Supreme Court then conducted a proportionality review.

3 Sochor was also convicted of kidnapping. (R 1190).

Direct Appeals Decisions by the Florida Supreme Court

The following collection of cases represents most, if not all, of the direct appeal decisions rendered by the Florida Supreme Court between January 1980 and January 1992. Listed is information pertaining to the case name and cite; the jury's recommended sentence; the trial court's sentence; whether HAC was found as an aggravating factor; whether any harmless error analysis was performed; the case disposition and the aggravating and mitigating factors found by the trial court. All information is derived from the opinions reviewed and no data is indicated where either the decision is unclear or silent.

Key:
Y = Affirmatively Found
N = Not found
O = Not Applicable
X = No Information
DP = Death Penalty
Life = Life Sentence

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Sochor v. State 580 So.2d 595 (Fla.1991)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: prev. violent felony; HAC; CCP; committed during felony Mit: none
Owen v. State ___ F.L.W. S___ (Fla. January 23, 1992)	DP	DP	Y	Y	Affirmed Death Penalty Victim Impact Harmless; Harmless error due to wrongful reliance on conviction subsequently overturned	Agg: previously convicted felon committed during sexual battery and burglary; HAC; CCP Mit: none
Happ v. State ___ F.L.W. S___ (Fla. January 23, 1992)	DP	DP	Y	Y	Affirmed Death Penalty; CCP struck	Agg: prior violent felony; Committed during sexual battery, kidnap & burglary; HAC; CCP Mit: age; family history; educatl aid to other imates

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Hodges v. State __ F.L.W. S___ (Fla. January 23, 1992)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: hinder law enforcement; CCP Mit: none
Pettit v. State 17 F.L.W. S41 (Fla. January 9, 1992)	No Jury	DP	N	Y	Affirmed Death Penalty Harmless error on under sent. of imprisonment rather on probation; still appropriate	Agg: under sent. of imprisonment; prior violent felony; committed during felony Mit: none
Dougan v. State 17 F.L.W. S10 (Fla. January 2, 1992)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: committed during kidnapping; HAC; CCP Mit: none
Watts v. State 17 F.L.W. S27 (Fla. January 2, 1992)	DP	DP	Y	Y	Affirmed Death Penalty HAC DIDN'T EFFECT WEIGHING PROCESS; proportionality discussed	Agg: previous violent felony; during sexual battery; financial gain; HAC Mit: low IQ - nonstatutory only; age;
Wickham v. State 16 F.L.W. S777 (Fla. December 20, 1991)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Six Agg., No Mit.
Gaskin v. State 16 F.L.W. S762 (Fla. December 5, 1991)	DP	DP	Y	O	Affirmed Death Penalty No penalty error; If HAC not found-harmless error	Agg: CCP; prev. capital felony; HAC (HAC found as to only one victim) committed during robbery/burglary; Mit: under influence of extreme emotion; deprived childhood

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Klokoc v. State 16 F.L.W. S756 (Fla. November 27, 1991)	Waived	Life	N	O	Resentenced; Reduced to life based on agg. does not outweigh mit.	1 Agg., 5 Mit.
Espinosa v. State 16 F.L.W. S753 (Fla. November 27, 1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: previous violent felony; prevent lawful arrest; during armed burglary; HAC (Co-defendant Death) Mit: no significant history; good man
Dailey v. State 16 F.L.W. S74 (Fla. November 14, 1991)	DP	DP	Y	N	Remanded for resentencing without jury; dropped committed to avoid arrest & CCP	Agg: prev. felony; avoid arrest; HAC CCP; comm. during sexual battery Mit: none
Cruse v. State 16 F.L.W. S701 (Fla. October 24, 1991) (5 victims)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: prior felony; great risk; CCP; prevent lawful arrest Mit: extreme emotional disturbance
Santos v. State 16 F.L.W. S633 (Fla. October 26, 1991)	DP	DP	Y	N	New Sentencing without jury trial court overlooked mitigation; STRUCK HAC	Agg: prev. conviction; HAC; CCP Mit: none
Sireci v. State 587 So.2d 450 (Fla.1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; HAC; CCP; pecuniary gain; eliminate witness; comm/robbery Nonstatutory mitigation found

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Tillman v. State 16 F.L.W. S674 (Fla. October 17, 1991)	Pled	DP	Y	N	Vacated Death Penalty Life Imposed	Agg: HAC; on parole/murder Mit: presented — Court stated had to abide by agreement of plea for penalty
Ponticelli v. State 16 F.L.W. S669 (Fla. October 10, 1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: Comm. pecuniary gain; CCP: HAC (as to one victim) Mit: no significant history; age
Savage v. State 16 F.L.W. S647 (Fla. October 3, 1991)	Life	DP	N	O	Vacated Death Penalty Life Imposed	Jury recomendation followed based on numerous factors
Bowden v. State 16 F.L.W. S614 (Fla. September 12, 1991)	DP	DP	Y	Y	Affirmed Death Penalty struck prev. felony- harmless error	Agg: prev. felony; HAC Mit: horrible childhood (non-stat)
Maqueira v. State 16 F.L.W. S599 (Fla. August 29, 1991)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC Mit: none	Agg: prev. felony; HAC; avoid arrest; comm/ during burglary
Burns v. State 16 F.L.W. S389 (Fla. May 16, 1991)	DP	DP	Y	N	Remand new sentence with jury STRUCK HAC	Agg: avoid arrest; HAC Mit: no significant history; other nonstatutory mitigation
Davis v. State 586 So.2d 1038 (Fla.1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP; prev. felony; sent. of imprisonment Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Henry v. State 586 So.2d 1033 (Fla.1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: Comm/robbery; avoid arrest; pecuniary gain; HAC; CCP Mit: none
Wright v. State 586 So.2d 1024 (Fla.1991)	Life	DP	O	O	New Trial; must give life Sentenced to life if convicted again	Trial errors-new trial
Craig v. State 585 So.2d 278 (Fla.1991)	Life	DP	O	O	Reversed Death Penalty Override Life Sentence Imposed	
Omelus v. State 584 So.2d 563 (Fla.1991)	DP	DP	Y	N	Remanded/New sentencing without jury; STRUCK HAC	
Beltran-Lopez v. State 583 So.2d 1030 (Fla.1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; prevent arrest; comm/armed burglary; HAC Mit: no significant history; good son
Craig (Donnie) v. State 583 So.2d 1018 (Fla.1991)	X	X	X	O	New Trial Jury Selection Infirmed	
Capehart v. State 583 So.2d 1009 (Fla.1991)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: CCP; HAC; prev. felony; comm/robbery Mit: nonstatutory

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Green v. State 583 So.2d 647 (Fla.1991)	DP	DP	Y	Y	Affirmed Death Penalty Avoid arrest not valid; improper doubling; CCP struck	Agg: prev. felony; comm/robbery; avoid arrest; pecunary gain; HAC; CCP Mit: none
Christopher v. State 583 So.2d 642 (Fla.1991)	DP	X	O	O	Ct. gives life due to no written order by the trial judge	
Taylor v. State 583 So.2d 323 (Fla.1991)	DP	DP	Y	N	Resentence without jury Improper prosecutor's argument	Agg: prev. felony; comm/sexual battery; HAC Mit: none
McCrae v. State 582 So.2d 613 (Fla.1991)	Life	DP	Y	N	Remand for life sentence Due to override improper	Agg: prev. felony; comm/sexual battery; HAC (override case)
Gilliam v. State 582 So.2d 610 (Fla.1991)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; prev. felony; comm/sex. battery; Mit: broken home; physical abuse; family wanted mercy (nonstatutory)
Scott v. State 581 So.2d 887 (Fla.1991)	DP	DP	Y	N	Released from prosecution based on delay in being brought to trial	Agg: HAC; comm/kidnapping; avoid arrest; CCP Mit: none
Cook v. State 581 So.2d 141 (Fla.1991)	DP	DP	N	Y	Affirmed Death Penalty Proportionate	Agg: prev. felony; comm/robbery; pecuniary gain Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Riechmann v. State 581 So.2d 133 (Fla.1991)	DP	DP	N	O	Affirmed Death Penalty	Agg: pecuniary gain; CCP Mit: good man
Hayes v. State 581 So.2d 121 (Fla.1991)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: CCP; robbery/pecuniary gain Mit: age
Cooper v. State 581 So.2d 49 (Fla.1991)	Life	DP	N	O	Reversed; Ct. imposed life sentence	Agg: sent/imprison; prev. felony; comm/robbery; avoid arrest Mit: family ties; alcohol abuse
Valle v. State 581 So.2d 40 (Fla.1991)	DP	DP	N	Y	Affirmed Death Penalty Harmless error-no remorse improper	Agg: prev. felony; CCP; (murder law law enforcement officer;preventing arrest;hinder law enforcement-merged); Mit: none
Derrick v. State 581 So.2d 31 (Fla.1991)	DP	DP	Y	O	Remand for new sentence with jury; improper consideration of no remorse	Agg: comm/robbery; avoid arrest; HAC; CCP Mit: age
Asay v. State 580 So.2d 610 (Fla.1991)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: under sent/imprisonment; prev. capital felony-2ND MURDER: CCP Mit: age
Jones v. State 580 So.2d 143 (Fla.1991)	DP	DP	N	Y	Affirmed Death Penalty Struck robbery factor Harmless	Agg: under sent/imprisonment; prior violent felony; comm/robbery (avoid arrest;detention law enforcement officer-merged) Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Walls v. State 580 So.2d 131 (Fla.1991)	DP	DP	O	O	Reversed for new trial; Due process issue-Miranda	
Zeigler v. State 580 So.2d 127 (Fla.1991) (Resentencing)	Life	DP	Y	O	Affirmed Death Penalty	Agg: HAC; pecuniary gain; avoid arrest; prev. capital felony Mit: no significant history
Young v. State 579 So.2d 721 (Fla.1991)	DP	DP	N	Y	Affirmed Death Penalty Struck CCP harmless error Proportionate	Agg: comm/burgiary; pecuniary gain; avoid arrest; CCP Mit: church activities;conform to rules in prison
Shere v. State 579 So.2d 86 (Fla.1991)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC-Harmless	Agg: disrupt law enforcement; HAC; CCP Mit: mitigation did not outweigh aggravation.
McKinney v. State 579 So.2d 80 (Fla.1991)	DP	DP	Y	N	Vacated DP/Remand for Life STRUCK HAC; CCP	Agg: HAC; CCP; comm/robbery Mit: no significant history other nonstatutory mitigation
Hitchcock v. State 578 So.2d 685 (Fla.1990) (Resentencing)	DP	DP	Y	O	Affirmed Death Penalty Proportionality	Agg: sent/imprisonment; comm/ sexual battery; avoid arrest; HAC Mit: Age, deprivation, character traits; drug use; alcohol
Carter v. State 576 So.2d 1291 (Fla.1990)	DP Life	DP Life	N	O	Affirmed Death Penalty Proportionate	Agg: sent/imprisonment; prev. felony; comm/robbery Mit: deprived childhood

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Trotter v. State 576 So.2d 691 (Fla.1990)	DP	DP	Y	N	Remand for Sentencing without jury Struck comm/under sentence	Agg: comm/under sent; prev. felony; comm/robbery; HAC Mit: extreme mental capacity impaired; low IQ; family problems; remorse
Dolinsky v. State 576 So.2d 271 (Fla.1991)	Life	DP	N	N	Death Penalty Vacated Sentenced to Life Struck CCP	Agg: prev. violent conviction; CCP; comm/robbery Mit: none
(Clinton) Jackson v. State 575 So.2d 181 (Fla.1991)	DP	DP	N	O	Death Penalty Vacated based on Enmund/Tison	Agg: comm/robbery; avoid arrest Mit: none
Hegwood v. State 575 So.2d 170 (Fla.1991)	Life	DP	Y	O	Vacated Override; imposed Life	Agg: prev. violent crime; comm/ robbery; avoid arrest; pecuniary gain (merged w/robbery); HAC; CCP Mit: age (17 yrs.)
Douglas v. State 575 So.2d 165 (Fla.1991)	Life	DP	Y	N	Vacated Override; Life sentence imposed; struck CCP	Agg: HAC; CCP Mit: non-violent person; good institutional record
Downs v. State 574 So.2d 1095 (Fla.1991)	Life	DP	Y	N	Vacated Override; Life Sentence imposed	Agg: HAC; CCP; comm/robbery; prior felony Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Gunsby v. State 574 So.2d 1085 (Fla.1991)	DP	DP	N	O	Affirmed Death Penalty Proportionality	Agg: CCP; prior felony; comm/under sentence of imprisonment Mit: mildly retarded
Penn v. State 574 So.2d 1079 (Fla.1991)	DP	DP	Y	N	Remand Sentence to Life Struck CCP	Agg: HAC; CCP Mit: no sign. history; under extreme influence
Nibert v. State 574 So.2d 1059 (Fla.1990) (RESENTENCE)	DP	DP	Y	N	Vacated Death Penalty Sentenced to Life; found other mitigation	Agg: HAC Mit: possible childhood abuse
Williams v. State 574 So.2d 136 (Fla.1991)	DP	DP	X	X	New Trial Slappy/Neil/Batson trial issue	
Reaves v. State 574 So.2d 105 (Fla.1991)	DP	DP	X	X	New Trial	
Anderson v. State 574 So.2d 87 (Fla.1991)	DP	DP	N	O	Affirmed Death Penalty	Agg: pecuniary gain; CCP Mit: codefendant pled-recv'd lesser sentence
Bruno v. State 574 So.2d 76 (Fla.1991)	DP	DP	Y	Y	Affirmed Death Penalty Proportionate; struck prior felony	Agg: prior felony; pecuniary gain; HAC; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Henry v. State 574 So.2d 73 (Fla.1991)	DP	DP	X	X	New Trial-Court observed CCP not sustainable	
Henry v. State 574 So.2d 66 (Fla.1990)	DP	DP	X	X	New Trial	
Holton v. State 573 So.2d 284 (Fla.1990)	DP	DP	Y	Y	Affirmed Death Penalty Struck prior conviction and CCP	Agg: prior convict; comm/sexual sexual battery; HAC; CCP Mit: drug addiction; had children
Nowitzke v. State 572 So.2d 1346 (Fla.1990)	DP	DP	X	X	New Trial-Improper prosecutorial conduct, et al.	
Nixon v. State 572 So.2d 1336 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior violent felony; comm/kidnap; pecuniary gain; HAC; CCP Mit: none
Lewis v. State 572 So.2d 908 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior violent felony; comm/kidnap; HAC Mit: none
Downs v. State 572 So.2d 895 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: prior convict; pecuniary gain; CCP Mit: nothing to override aggravation
Campbell v. State 571 So.2d 415 (Fla.1990)	DP	DP	Y	N	Remand for Resentencing without jury; struck CCP	Agg: prior convict; comm/burglary; HAC; pecuniary gain; CCP Mit: nonstatutory

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Colina v. State 570 So.2d 929 (Fla.1991)	DP	DP	Y	N	New Sentence with jury Improper admissions at penalty phase	Agg: comm/robbery; avoid arrest; HAC; CCP Mit: none
Czubak v. State 570 So.2d 925 (Fla.1990)	DP	DP	X	X	New Trial	
Buford v. State 570 So.2d 923 (Fla.1990) (Resentence)	Life	DP	Y	O	Override Vacated Reduced to Life Sentence	Agg: comm/sexual battery; HAC Mit: no sign. history; age
Sanchez-Velasco v. State 570 So.2d 908 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; comm/sexual battery Mit: none
Occhicone v. State 570 So.2d 902 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; comm/burglary; CCP Mit: none
Scull v. State 569 So.2d 1251 (Fla.1990) (Resentence)	DP	DP	X	X	New Sentencing without jury	
Jones v. State 569 So.2d 1234 (Fla.1990)	DP	DP	N	N	New Sentencing without jury rejects trial court's instruction on HAC; no factual support whether sexual battery on corpse	Agg: pecuniary gain; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Floyd v. State 569 So.2d 1225 (Fla.1990) (Resentence)	DP	DP	Y	O	Affirmed Death Penalty	Agg: pecuniary gain; HAC Mit: none
Farinas v. State 569 So.2d 425 (Fla.1990)	DP	DP	Y	N	Vacated Death Penalty Imposed Life Sentence Struck CCP	Agg: comm/kidnap; HAC; CCP Mit: under emotional disturbance; impaired capacity
Cheshire v. State 568 So.2d 908 (Fla.1990)	Life	DP	Y	N	Vacated Override Life Sentence HAC IMPROPERLY FOUND	Agg: prior convict; comm/burglary; HAC Mit: none
Garcia v. State 568 So.2d 896 (Fla.1990)	DP	DP	X	X	New Trial; severance of charges issue	
Duckett v. State 568 So.2d 891 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/sexual battery; HAC Mit: no sign. history; (family background; education-nonstatutory)
Hall v. State 568 So.2d 882 (Fla.1990)	DP	DP	X	X	New Trial testimony of expert re: sanity defense improperly excluded	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Lucas v. State 568 So.2d 18 (Fla.1990) (Resentence)	DP	DP	X	X	Vacated Death Penalty Resentence again without jury	
Thompson v. State 565 So.2d 1311 (Fla.1990)	DP	DP	N	N	Vacated Death Penalty Life Sentence Imposed Struck CCP; only aggravation found	Agg: CCP Mit: no sign. history (emotional stress; maintained employmt; considerate son; good inmate-nonstatutory)
Bryant v. State 565 So.2d 1298 (Fla.1990)	DP	DP	X	X	New Trial Slappy/Neil/Batson issue	
Livingston v. State 565 So.2d 1288 (Fla.1990)	DP	DP	N	N	Vacated Death Penalty Reduced to Life Struck avoid arrest	Agg: prior convict;comm/robbery; avoid arrest Mit: age (juvenile-17 yrs); unfortunate homelife
Brown v. State 565 So.2d 304 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: prior convict;comm/felony; CCP; Mit: mental capacity; emotional stress; economic deprivation; non-violent past
Van Poyck v. State 564 So.2d 1066 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty	Agg: under sent/imprison;effect escape; created great risk: prior conviction Mit: rejected mit. re: poor childhood

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Porter v. State 564 So.2d 1060 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: prior felony convict; comm/burglary HAC; CCP Mit: none
Garcia v. State 564 So.2d 124 (Fla.1990)	DP	DP	X	X	New Trial based on evidence not provided	
Pardo v. State 563 So.2d 77 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty Proportionate; Ct. found mitigation no significant history improperly found by trial court	Agg: each CCP; death of drug informant; hinder law enforcement; pecuniary gain Mit: trial court found no sign. mitigation
Freeman v. State 563 So.2d 73 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: prior felony; comm/burglary; pecuniary gain Mit: nonstatutory-low IQ; abused by stepfather; artistic ability; enjoyed playing w/kids
Randolph v. State 62 So.2d 331 (Fla.1990)	DP	DP	Y	O	Affirmed Death Penalty	Agg: flight after sexual battery; avoid detection; pecuniary gain; HAC Mit: atypical personality disorder; expressed shame and remorse
Blakely v. State 561 So.2d 560 (Fla.1990)	DP	DP	Y	O	Remand for Life Sentence Disproportionate-Wife Killed	Agg: HAC; CCP Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Rivera v. State 561 So.2d 536 (Fla.1990)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: prior conv; comm/felony; HAC; CCP Mit: extreme emotional stress
Haliburton v. State 561 So.2d 248 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty	Agg: under sent/imprison;prior felony; engaged in burglary; CCP Mit: insufficient to outweigh aggravation
Carter v. State 560 So.2d 1166 (Fla.1990)	Life	DP	X	X	Vacated Override Reduced to Life	
Hallman v. State 560 So.2d 223 (Fla.1990)	Life	DP	Y	O	Vacated Override Reduced to Life STRUCK HAC; great risk	Agg: under sent/imprison; avoid detect; flight from armed robbery; HAC; great risk Mit: family; abusive childhood; good person (above argued-court found none
Ventura v. State 560 So.2d 217 (Fla.1990)	DP	DP	N	O	Affirmed Death Penalty	Agg: pecuniary gain; CCP Mit: none
Owen v. State 560 So.2d 207 (Fla.1990)	DP	DP	X	X	New Trial based on Fifth Amendment confession issue	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Reed v. State 560 So.2d 203 (Fla.1990)	DP	DP	Y	Y	Affirmed Death Penalty Struck prior felony; CCP	Agg: prior felony; comm/sexual battery; avoid detection; pecuniary gain; CCP; HAC Mit: none
Bouie v. State 559 So.2d 1133 (Fla.1990)	DP	DP	X	X	Death Penalty Vacated-No specific written findings by trial court; sentenced to life	
Reilly v. State 557 So.2d 1365 (Fla.1990)	DP	DP	X	X	New trial due to failure to excuse for cause prospective jurors	
Morris v. State 557 So.2d 27 (Fla.1990)	Life	DP	Y	O	Vacated Override Life Sentence Imposed	Agg: HAC Mit: borderline IQ; grief for murder
Thompson v. State 553 So.2d 153 (Fla.1989)	Life	DP	Y	O	Affirmed Death Penalty contract killing	Agg: prior violent felony; comm/ kidnap; pecuniary gain; CCP; HAC Mit: none
Christian v. State 550 So.2d 450 (Fla.1989)	Life	DP	Y	N	Override Vacated Life Sentence Imposed Struck CCP	Agg: under sent/imprison; prior felony; HAC; CCP Mit: none
Fuente v. State 549 So.2d 652 (Fla.1989)	Life	DP	N	O	Override Vacated Life Sentence Imposed disparate treatment	Agg: prior convict; avoid arrest; CCP Mit: 6 mos. after murder, saved life

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Zerquera v. State 549 So.2d 189 (Fla.1989)	DP	DP	X	X	New Trial due to confession issue	
Hill v. State 549 So.2d 179 (Fla.1989)	DP	DP	Y	N	Remanded for resentencing with jury-struck pecuniary gain	Agg: HAC; comm/sex. battery pecuniary gain Mit: no significant history
Stewart v. State 549 So.2d 171 (Fla.1989)	DP	DP	X	X	Remanded for written findings by trial court	
Alvin v. State 548 So.2d 1112 (Fla.1989)	DP	DP	N	N	Remanded for Resentencing without jury; Struck great risk	Agg: great risk; comm/robbery Mit: none
Thompson v. State 548 So.2d 198 (Fla.1989)	X	DP	X	X	New Trial re: Slappy/ Batson issue	
Stokes v. State 548 So.2d 188 (Fla.1989)	DP	DP	N	N	New Trial-Neil/Slappy/ Batson Struck CCP	Agg: comm/robbery; CCP Mit: none
Rhodes v. State 547 So.2d 1201 (Fla.1989)	DP	DP	Y	N	New Sentencing with jury STRUCK HAC; prior conviction; CCP	Agg: prior felony convict; comm/ sexual battery; HAC; CCP Mit: personality disorder

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Cochran v. State 547 So.2d 928 (Fla.1989)	Life	DP	Y	N	Vacated Override Life Sentence Imposed STRUCK HAC low IQ; emotionally disturbed; reading handicapped	Agg: prior capital felony; HAC; pecuniary gain; comm/kidnap Mit: none
Bello v. State 547 So.2d 914 (Fla.1989)	DP	DP	N	O	Vacated Death Sentence New Sentencing without jury Struck great risk; improper doubling	Agg: prior convict; great risk; (avoid arrest; hinder law enforce- merged) Mit: no significant history
Walton v. State 547 So.2d 622 (Fla.1989) (Resentence)	DP	DP	Y	Y	Affirmed Death Penalty Harmless error as to penalty admission	Agg: comm/robbery/burglary; pecuniary gain; HAC; CCP Mit: none
Hamilton v. State 547 So.2d 630 (Fla.1989)	DP	DP	Y	N	New Trial due to juror who was not impartial STRUCK HAC; CCP	Agg: HAC; CCP; prior convict Mit: no sign. history;nonviolent person; served honorably armed forces; didn't drink to excess
Barwick v. State 547 So.2d 612 (Fla.1989)	X	DP	X	X	New trial due to exclusion of black jurors	
Freeman v. State 547 So.2d 125 (Fla.1989)	Life	DP	Y	O	Vacated Override Life Sentence imposed; Ct. found mitigation of age	Agg: HAC; comm/burglary;prior convict. Mit:abuse;psychological problems

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Castro v. State 547 So.2d 111 (Fla.1989)	DP	DP	Y	N	New Sentencing with jury due to Williams Rule evid. presented at guilt that impacted on penalty phase	Agg: CCP; HAC; comm/robbery Mit: none
Roundtree v. State 546 So.2d 1042 (Fla.1989)	X	DP	X	X	New Trial re: Slappy/ Batson	
Smalley v. State 546 So.2d 720 (Fla.1989)	DP	DP	Y	O	Vacated Death Penalty Sentenced to Life Proportionate	Agg: HAC Mit: lack of criminal history; extreme emotional disturbance; impaired capacity; extreme duress (nonstatutory: abusedchildhood; work record; remorse)
Spencer v. State 545 So.2d 1352 (Fla.1989)	X	DP	X	X	New trial-racial composition of jury pool	
Rivera v. State 545 So.2d 864 (Fla.1989)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; CCP	Agg: prior convict; great risk; comm/flight/robbery; avoid arrest; HAC; CCP Mit: none
Pentecost v. State 545 So.2d 861 (Fla.1989)	Life	DP	Y	O	Vacated Override Sentenced to Life	Agg: comm/burglary; HAC; CCP Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Dudley v. State 545 So.2d 857 (Fla.1989)	DP	DP	Y	N	Death Penalty Vacated Resentencing with jury Struck CCP	Agg: HAC; CCP; comm/robbery; financial gain Mit: medical and psychological problems
Rutherford v. State 545 So.2d 853 (Fla.1989)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP (comm/robbery; pecuniary gain-merged) Mit: no significant history
Mendyk v. State 545 So.2d 846 (Fla.1989)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/kidnap/sexual battery; HAC; CCP Mit: age (21 yrs.)
Jackson v. State 545 So.2d 260 (Fla.1989)	DP	DP	X	X	New trial due to improper comments	
Songer v. State 544 So.2d 1010 (Fla.1989) (Resentence)	DP	DP	N	O	Death Penalty not appropriate life sentence	Agg: under sent/imprison Mit: numersus mitigation
Cherry v. State 544 So.2d 184 (Fla.1989)	DP	DP	Y	Y	Affirmed Death Penalty as to Mrs. Wayne; life for husband; improper doubling	Agg: prior felony; (comm/burglary; pecuniary gain-merged); HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Cook v. State 542 So.2d 964 (Fla.1989)	DP	DP	Y	N	Vacated Death Sentence; Remand as to Mrs. Beaucourt murder; resentence without jury STRUCK HAC; avoid arrest	Agg: HAC; avoid arrest; (comm/ robbery; pecuniary gain-merged); prior convict.
Ramirez v. State 542 So.2d 352 (Fla.1989)	DP	DP	X	X	New Trial-improper admission of evidence	
Brown v. State 538 So.2d 833 (Fla.1989)	X	DP	X	X	New trial re: ex parte communications.	
Hudson v. State 538 So.2d 829 (Fla.1989)	DP	DP	N	O	Affirmed Death Penalty Proportionate	Agg: prior convict; comm/robbery Mit: letter weight to extreme emotion impaired capacity; age (22 yrs)
Edwards v. State 538 So.2d 440 (Fla.1989)	X	DP	X	X	New trial due to admiss. in-court ID without counsel	
Schafer v. State 537 So.2d 988 (Fla.1989)	DP	DP	Y	N	Vacated Death Penalty-New Sentencing without jury; Struck CCP; prior felony; avoid arrest	Agg: prior felony;comm/robbery; avoid arrest; HAC; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Mack v. State 537 So.2d 109 (Fla.1989)	X	DP	X	X	New trial-failure to obtain waiver from defendant on instruction	
Lopez v. State 536 So.2d 226 (Fla.1988)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; avoid arrest; comm/burglary Mit: none
Banda v. State 536 So.2d 221 (Fla.1988)	DP	DP	N	N	Vacated Death Penalty Remand sentence to life; no agg's; Struck CCP	Agg: CCP
Scull v. State 533 So.2d 1137 (Fla.1988)	DP	DP	Y	N	Vacated Death Penalty; Resentencing without jury; Struck great risk; avoid arrest; pecuniary gain; CCP	Agg: great risk;comm/burglary; avoid arrest pecuniary gain; HAC; CCP Mit: no significant history; age (24 yrs)
LeCroy v. State 533 So.2d 750 (Fla.1988)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; comm/robbery; avoid arrest Mit: no sign. history; age (17 yrs)
Bryan v. State 533 So.2d 744 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/kidnap/ robbery; avoid arrest; pecuniary gain; CCP; HAC Mit: good work record; gainfully employed

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Kyser v. State 533 So.2d 285 (Fla.1988)	X	DP	X	X	New trial-inadmissibility of statement	
Swafford v. State 533 So.2d 270 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: avoid arrest; HAC; CCP; comm/flight/sexual battery Mit: good eagle scout
Lamb v. State 532 So.2d 1051 (Fla.1988)	DP	DP	Y	N	Vacated Death Penalty New Sentencing without jury Struck prior conviction	Agg: prior convict; HAC; CCP; comm/burglary Mit: codefendant sent. mitigation
Amores v. State 531 So.2d 1256 (Fla.1988)	DP	DP	Y	N	Life Sentence Appropriate STRUCK HAC; CCP; therefore, no aggravating circumstances	Agg: HAC; CCP Mit: nonstatutory
Pridgen v. State 531 So.2d 951 (Fla.1988)	DP	DP	Y	O	New sentencing with jury Struck penalty due to trial courts failure to do competency hearing prior to sentence	Agg: under sent/imprison; prior felony; comm/robbery;avoid arrest; pecuniary gain; HAC; CCP Mit: none
Hildwin v. State 531 So.2d 124 (Fla.1988)	DP	DP	Y	Y	Affirmed Death Penalty Struck prior felony	Agg: prior felony; under sent/ imprison; pecuniary gain; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Jackson v. State 530 So.2d 269 (Fla.1988)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP-Harmless error	Agg: under sent/imprison; prior felony; financial gain; CCP; HAC Mit: none to outweigh
Turner v. State 530 So.2d 45 (Fla.1988)	Life DP	DP	Y	O	Affirmed Death Penalty	Agg: prev. felony; comm/burglary; HAC; CCP Mit: outweighed by aggravation
Spivey v. State 529 So.2d 1088 (Fla.1988)	Life	DP	N	O	Vacated Override Life Sentence imposed Struck prior conviction	Agg: prior felony; pecuniary gain Mit: impoverished childhood; cohorts plea bargained for life
Harvey v. State 529 So.2d 1083 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; CCP; comm/ robbery Mit: none
Long v. State 529 So.2d 286 (Fla.1988)	DP	DP	Y	N	New sentencing with jury Struck prior conviction	Agg: comm/kidnap; prior conviet; HAC; CCP Mit: under influence extreme emotional capacity to appreciate impaired
Garron v. State 528 So.2d 353 (Fla.1988)	DP	DP	X	X	New trial based on trial errors	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Fitzpatrick v. State 527 So.2d 809 (Fla.1988)	DP	DP	N	O	Vacated Death Penalty Reduced Sentence to Life Death not appropriate due to proportionality	Agg: prior convict.; great risk; comm/kidnap; avoid arrest; pecuniary gain Mit: extreme emotional stress; (great deal of mitigation)
Hamblen v. State 527 So.2d 800 (Fla.1988)	DP	DP	N	Y	Affirmed Death Penalty Struck CCP	Agg: CCP; prior convict: comm/robbery Mit: none
Buenoano v.State 527 So.2d 194 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: pecuniary gain; HAC; CCP; prior convict Mit: none
Harmon v. State 527 So.2d 182 (Fla.1988)	Life	DP	N	O	Override reversal-Life imposed;struck CCP	Agg: prior felony; pecuniary gain; CCP; avoid detection Mit: none
Mitchell v. State 527 So.2d 179 (Fla.1988)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP-Harmless Error	Agg: prior convict; comm/robbery; HAC; CCP Mit: none
Brown v. State 526 So.2d 903 (Fla.1988)	Life	DP	Y	N	Vacated Override Life Sentence imposed STRUCK HAC	Agg: prior felony; comm/robbery; HAC Mit: age
Moore v. State 525 So.2d 870 (Fla.1988)	DP	DP	X	X	New trial-trial errors	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Grossman v. State 525 So.2d 833 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid detection/hinder law enforcement; avoid arrest; comm/robbery Mit: not outweigh agg.
Torres-Arboledo v. State 524 So.2d 403 (Fla.1988)	Life	DP	N	O	Affirmed Death Penalty override sustained	Agg: comm/robbery; prior felony convict. Mit: harmless if any/mit. not considered
Lloyd v. State 524 So.2d 396 (Fla.1988)	DP	DP	Y	N	Vacated Override; Life Sentence; STRUCK HAC; CCP Not Proportionate	Agg: comm/rape/robbery; CCP; HAC Mit: good husband;dependable worker
Merritt v. State 523 So.2d 573 (Fla.1988)	X	DP	X	X	New trial-trial errors	
Correll v. State 523 So.2d 562 (Fla.1988)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; HAC; comm/robbery; avoid arrest; HAC; CCP Mit: none
Caillier v. State 523 So.2d 158 (Fla.1988)	Life	DP	N	O	Vacated Override Life Sentence Imposed (codefendant received life)	Agg: financial gain; CCP Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Remeta v. State 522 So.2d 825 (Fla.1988)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; comm/robbery; avoid detection; CCP Mit: mental age (13) deprived childhood; Low IQ; speech problem; substance abuse
Perry v. State 522 So.2d 817 (Fla.1988)	Life	Life	Y	O	Vacated Override Life Sentence Imposed Struck prior conviction; no sign. history	Agg: prior convict; eliminate witness; CCP; comm/robbery; HAC Mit: none
Jackson v. State 522 So.2d 802 (Fla.1988) (2 victims)	DP Life	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: prior convict; HAC; CCP Mit: model prisoner; could adjust to prison life, not a behavior problem
Holsworth v. State 522 So.2d 348 (Fla.1988)	Life	DP	Y	O	Override Vacated Life Sentence Imposed	Agg: prev. felony; comm/robbery; HAC Mit: expressly rejected mit. tendered
Tillman v. State 522 So.2d 14 (Fla.1988)	DP	DP	X	X	New Sentence with jury due to selection of penalty jury Neil/Slappy/Batson	
Hardwick v. State 521 So.2d 1071 (Fla.1988)	DP	DP	Y	Y	Affirmed Death Penalty Struck comm/kidnap; pecuniary	Agg: prior felony; comm/kidnap; HAC; pecuniary gain; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Kritzman v. State 520 So.2d 568 (Fla.1988)	X	DP	X	X	New trial-trial errors	
Duboise v. State 520 So.2d 260 (Fla.1988)	Life	DP	Y	N	Vacated Override-Life Sentence Imposed;Ct. found possible mitigation: age (18); domination; deprived family life; IQ 79	Agg: comm/felony; avoid arrest; HAC Mit: none
Robinson v. State 520 So.2d 1 (Fla.1988)	DP	DP	X	X	Vacated Death Penalty New Sentence with jury State impermissibly argued evidence	
Long v. State 517 So.2d 664 (Fla.1987)	DP	DP	X	X	Nonstatutory agg.; no remorse New trial-defendant's statement improperly used	
Masterson v. State 516 So.2d 256 (Fla.1987)	Life	DP	N	O	Vacated Override; Life Sentence Imposed; Ct. found mitigation: Viet Nam vet; wounded, drug use	Agg: CCP; comm/robbery; avoid arrest prior felony Mit: none
Brown v. State 515 So.2d 211 (Fla.1987)	X	DP	X	X	New trial-failure re: Richardson hearing	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Smith v. State 515 So.2d 182 (Fla.1987)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: under sent/imprison; prior felony; comm/sexual battery/ burglary; HAC; CCP Mit: gave little weight
Gilliam v. State 514 So.2d 1098 (Fla.1987)	X	DP	X	X	New trial-trial errors	
King v. State 514 So.2d 354 (Fla.1987)	DP	DP	Y	N	Affirmed Death Penalty Struck arson/great risk	Agg: prior felony; sent/imprison; HAC; arson/great risk; burglary/ sexual battery Mit: none
Patterson v. State 513 So.2d 1257 (Fla.1987)	DP	DP	Y	O	Remand without jury No written order by trial judge	Agg: prev. convict; comm/burglary; HAC Mit: no significant history
Koon v. State 513 So.2d 1253 (Fla.1987)	X	DP	X	X	New Trial-reversible error	
Diaz v. State 513 So.2d 1045 (Fla.1987)	DP	DP	N	O	Affirmed Death Penalty Struck great risk Proportionate	Agg: great risk; under sent/ imprison; prev. convict; comm/ kidnap; pecuniary gain Mit: none
Kight v. State 512 So.2d 922 (Fla.1987)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/robbery; HAC Mit: nonstatutory

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Fead v. State 512 So.2d 176 (Fla.1987)	Life	DP	N	O	Vacated Override Life Sentence Imposed numerous mitigation	Agg: under sent/imprison; prior felony Mit: hardworker; good employee
Jennings v. State 512 So.2d 169 (Fla.1987)		DP	Y	Y	Affirmed Death Penalty	Agg: flight/burglary; HAC Mit: none
Rogers v. State 511 So.2d 526 (Fla.1987)	DP	DP	N	Y	Affirmed Death Penalty Struck pecuniary gain; avoid detection; CCP	Agg: pecuniary gain; avoid detection; CCP; comm/flight/robbery; prev. felony Mit: none
Williamson v. State 511 So.2d 289 (Fla.1987)	DP	DP	N	O	Affirmed Death Penalty	Agg: under sent/imprison; prev. convict; CCP Mit: none
Roberts v. State 510 So.2d 885 (Fla.1987)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: prior convict; under sent/ imprison; comm/sexual battery; HAC Mit: none
Engle v. State 510 So.2d 881 (Fla.1987)		DP	Y	N	Affirmed Death Penalty	Agg: robbery/kidnap; avoid arrest; HAC; pecuniary gain Mit: none
Craig v. State 510 So.2d 857 (Fla.1987)	DP Life	DP	Y	N	Vacated Death Penalty New Sentencing without jury to consider Skipper evidence STRUCK HAC	Agg: financial gain; HAC; CCP Mit: no significant history Agg: (other murder) pecuniary gain; prior convict; HAC; CCP

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Hansbrough v. State 509 So.2d 1081 (Fla.1987)	Life	DP	Y	N	Override Vacated Life Sentence Imposed Struck avoid arrest; CCP	Agg: comm/robbery; avoid detection; HAC; CCP Mit: none
Nibert v. State 508 So.2d 1 (Fla.1987)	DP	DP	Y	N	Vacated Death Sentence Resentencing without jury Struck CCP; comm/robbery	Agg: HAC; CCP; comm/robbery Mit: none
Ferry v. State 507 So.2d 1373 (Fla.1987)	Life	DP	X	X	Override Vacated Life recommendation mental mitigation	Agg: (unknown) Mit: not significant
Bates v. State 506 So.2d 1033 (Fla.1987)	DP	DP	Y	O	Affirmed Death Penalty Struck burglary/robbery	Agg: burglary; robbery; HAC Mit: none
Wasko v. State 505 So.2d 1314 (Fla.1987)	Life	D	Y	O	Override Vacated Life Sentence Ir.:posed Struck prior conviction; other mitigation	Agg: prior convict; comm/felony; avoid detection; HAC Mit: no significant history
Keen v. State 504 So.2d 396 (Fla.1987)	DP	DP	X	X	New trial-Williams Rule Evid.	
Muehleman v. State 503 So.2d 310 (Fla.1987)	DP	DP	Y	N	Affirmed Death Penalty HAC; CCP	Agg: comm/robbery; avoid arrest; Mit: nonstatutory

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Tompkins v. State 502 So.2d 415 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/sexual battery; HAC Mit: age
Jackson v. State 502 So.2d 409 (Fla.1986)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; comm/robbery; Proportionate	Agg: prior convict; comm/robbery; Mit: none
Melendez v. State 498 So.2d 1258 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/robbery HAC; CCP Mit: none
Jackson v. State 498 So.2d 906 (Fla.1986)	DP	DP	Y	N	Vacated Death Penalty New trial-trial error STRUCK HAC; CCP	Agg: HAC; CCP
Jackson v. State 498 So.2d 406 (Fla.1986)	DP	DP	N	Y	Affirmed Death Penalty; Improper doubling-harmless error	Agg: avoid arrest; hinder law enforce; CCP Mit: none
Floyd v. State 497 So.2d 1211 (Fla.1986)	DP	DP	Y	O	Vacated Death Penalty Resentencing with jury; Struck CCP; improper instruction re: mitigation	Agg: comm/burglary; avoid detection; HAC; CCP
Atkins v. State 497 So.2d 1200 (Fla.1986)	DP	DP	Y	N	Affirmed Death Penalty	Agg: comm/kidnap; avoid arrest; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Provenzano v. State 497 So.2d 1177 (Fla.1986)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; great risk; avoid arrest; hinder law enforcement; CCP Mit: no significant history
Arango v. State 497 S/2d 1161 (Fla.1986)	X	DP	X	X	New Trial	
Johnston v. State 497 So.2d 863 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/burglary; HAC Mit: none
Van Poyck v. State 497 So.2d 625 (Fla.1986)	Life	DP	X	X	Vacated Death Penalty Life sentence-no written order	
Irizarry v. State 496 So.2d 822 (Fla.1986)	Life	DP	Y	O	Vacated Override Reduced to Life Sentence (domestic setting)	Agg: prior convict; comm/burglary; CCP; HAC Mit: no sign. history; lived 40 yrs. w/crime
Way v. State 496 So.2d 126 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: great risk; comm/arson; HAC; CCP Mit: none
Ramos v. State 496 So.2d 121 (Fla.1986)	Life	DP	X	X	New trial-trial errors	

NAME	JURY-R?COM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Tefteteller v. State 495 So.2d 744 (Fla.1986)	DP	DP	Y	N	Affirmed Death Penalty	Agg: sent/imprison; prior felony; robbery Mit: none
Dufour v. State 495 So.2d 154 (Fla.1986)	DP	DP	N	Y	Affirmed Death Penalty Struck avoid arrest	Agg: avoid arrest; CCP Mit: 1
Huff v. State 495 So.2d 145 (Fla.1986)	DP	DP	Y	N	Affirmed Death Penalty Struck pecuniary gain	Agg: HAC; CCP; pecuniary gain Mit: no significant history
Brookings v. State 495 So.2d 135 (Fla.1986)	Life	DP	N	O	Vacated Override Life Sentence Imposed Disparate treatment of codefendant	Agg: under sent/imprison; prior convict's; pecuniary gain; hinder law enforcement; CCP Mit: saw father's suicide; disparate sentence of codef.; another received immunity
Puiatti v. State 495 So.2d 128 (Fla.1986)	DP	DP	N	O	Affirmed Death Penalty	Agg: avoid arrest; pecuniary gain; CCP Mit: none
Glock v. State 495 So.2d 128 (Fla.1986)	DP	DP	N	O	Affirmed Death Penalty	Agg: avoid arrest; pecuniary gain; CCP Mit: none
Lambrix v. State 494 So.2d 1143 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: under sent/imprison; prior convict; pecuniary gain; HAC; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Scott v. State 494 So.2d 1134 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/kidnap; HAC; financial gain; CCP Mit: age; impaired ability appreciate conduct
Muhammad v. State 494 So.2d 969 (Fla.1986)	Waived (jury)	DP	Y	O	Affirmed Death Penalty	Agg: under sent/imprison; prior felony; HAC Mit: none
Thompson v. State 494 So.2d 203 (Fla.1986)	X	DP	X	X	New Trial-Williams Rule Evid.	
Wilson v. State 493 So.2d 1019 (Fla.1986)	DP	DP	Y	N	Vacate/Resentencing	Agg: HAC; prior felony Mit: none
Kokal v. State 492 So.2d 1317 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/robbery; avoid arrest; CCP; HAC Mit: none
Smith v. State 492 So.2d 1063 (Fla.1986)	DP	DP	X	X	New trial-trial errors	Agg: prior convict; comm/robbery Mit: outweighed
Cooper v. State 492 So.2d 1059 (Fla.1986)	DP	DP	Y	Y	Affirmed Death Penalty Struck comm/kidnap	Agg: comm/kidnap; avoid detection; CCP; HAC Mit: none
Marek v. State 492 So.2d 1055 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty	Agg: contemp/kidnap; comm/robbery; HAC; pecuniary gain Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Garcia v. State 492 So.2d 360 (Fla.1986)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: HAC; avoid detection Mit:
Dragovich v. State 492 So.2d 350 (Fla.1986)	DP	DP	X	X	New Sentencing with jury improper evidence introduced re: reputation to negate no significant history at penalty phase	
Nelson v. State 490 So.2d 32 (Fla.1986)	Life	DP	X	X	New trial-trial errors	
Woods v. State 490 So.2d 24 (Fla.1986)	DP	DP	N	O	Affirmed Death Penalty	Agg: under sent/imprison; disrupt law enforcement Mit: age (18 yrs)
Peek v. State 488 So.2d 52 (Fla.1986)	X	DP	N	N	New Trial	
Robinson v. State 487 So.2d 1040 (Fla.1986)	DP	DP	X	X	New Sentencing without jury due to disallowance of mit. instructions	
Ameson v. State 487 So.2d 8 (Fla.1986)	Life	DP	Y	N	Override Vacated Life Sentence-extreme emotional status; age	Agg: comm/rape/burglary/kidnap; avoid arrest; HAC; pecuniary gain Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Kelly v. State 492 So.2d 578 (Fla.1986)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; pecuniary gain; CCP Mit: Ct. found defendant only participated
Echols v. State 484 So.2d 568 (Fla.1985)	Life	DP	N	O	Affirmed Death Penalty (Jury Override)	Agg: CCP; pecuniary gain; comm/ robbery Mit: no significant history
Suarez v. State 481 So.2d 1201 (Fla.1985)	DP	DP	N	O	Affirmed Death Penalty	Agg: comm/robbery; avoid arrest; great risk; Mit: none
Walton v. State 481 So.2d 1197 (Fla.1985)	DP	DP	X	X	New Sentencing without jury due to improper admissions at penalty phase; Bruton	
Byrd v. State 481 So.2d 468 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: pecuniary gain; HAC; CCP Mit: no significant history
O'Connell v. State 480 So.2d 1279 (Fla.1985)	DP	DP	X	X	New trial-failure to grant challenge for cause	
Deaton v. State 480 So.2d 1279 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/robbery; HAC; CCP Mit: no significant history
Gardner v. State 480 So.2d 91 (Fla.1985)	DP	DP	X	X	New trial-failure to give intoxication defense	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Toole v. State 479 So.2d 731 (Fla.1985)	DP	DP	N	N	Vacated Death Penalty New sentencing with jury failure to instruct on extreme emotional, etc.	Agg: comm/robbery; great risk; comm/arson
Burch v. State 522 So.2d 810 (Fla.1988) (new trial) 478 So.2d 1050 (Fla. 1985)	Life	DP	N	O	Override Vacated Resentenced to Life	Agg: under sent/imprison; prior felony; CCP Mit: mental capacity; impaired due to ingestation of drugs
Hill v. State 477 So.2d 553 (Fla.1985)	DP	DP	X	X	Death Penalty Vacated New Sentencing	
Hill v. State 515 So.2d 176 (Fla.1987) (Resentence)	DP	DP	N	Y	Affirmed Death Penalty Struck CCP	Agg: prior convict; great risk; CCP comm/robbery; avoid arrest Mit: age
Hooper v. State 476 So.2d 1253 (Fla.1985)	DP	DP	Y	Y	Affirmed Death Penalty Proportionate	Agg: prior convict; HAC; (2nd victim) avoid arrest; CCP Mit: served in military, salvation army, dedicated to christian principles
Phillips v. State 476 So.2d 194 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: under sent/imprison; prior convict; HAC; CCP
Haliburton v. State 476 So.2d 192 (Fla.1985)	DP	DP	X	X	New trial-evid. admitted at trial	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Cave v. State 476 So.2d 180 (Fla.1985)	DP	DP	Y	N	Affirmed Death Penalty	Agg: robbery; HAC; avoid arrest; kidnap Mit: none
Mills v. State 476 So.2d 172 (Fla.1985)	Life	DP	Y	Y	Affirmed Death Penalty Jury Override; STRUCK HAC; great risk; improper doubling	Agg: under sent/imprison; prior convict; great risk; felony murder burglary; pecunary gain; HAC Mit: none
Parker v. State 476 So.2d 134 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/kidnap/robbery; pecuniary gain; HAC; CCP Mit: age (19 yrs); good behavior at trial; victim not sexually molested
Bertolotti v. State 476 So.2d 130 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: prior convict; comm/robbery; HAC Mit: none
Roman v. State 475 So.2d 1228 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior convict; comm/sexual battery/kidnap; HAC Mit: capacity impaired; conform conduct
Gore v. State 475 So.2d 1205 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty Proportionate	Agg: under sent/imprison; comm/kidnap/sexual battery; avoid arrest; HAC; CCP Mit: none to outweigh agg.

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Huddleston v. State 475 So.2d 204 (Fla.1985)	Life	DP	X	X	Override Vacated Life Sentence Imposed	Agg: (unknown) Mit: number of mitigating factors
Gibson v. State 474 So.2d 1162 (Fla.1985)	DP	DP	X	X	New trial for competency hearing then new trial	
Ross v. State 474 So.2d 1170 (Fla.1985)	DP	DP	Y	O	Vacated Death Penalty Remand to Impose Life trial court failed to consid. mit. factors	Agg: HAC Mit: none (FSC: difficulty controlling emotions; no history of violence)
Hoffman v. State 474 So.2d 1178 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty HAC instruction not read to jury; trial court	Agg: prior convict; HAC; CCP Mit: no significant history; codefendant received life found-Ct. concurred
Peede v. State 474 So.2d 808 (Fla.1985)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior convict; comm/kidnap; CCP Mit: defendant acted violent due to wife
Valle v. State 394 So.2d 1005 (Fla.1981) (new trial) 474 So.2d 796 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; comm/flight/robbery Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Griffin v. State 474 So.2d 777 (Fla.1985)	DP	DP	N	O	Affirmed Death Penalty Struck CCP; prior convict; prevent arrest	Agg: prior convict; comm/flight/ robbery; avoid arrest; financial gain; CCP
Ferguson v. State 474 So.2d 208 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP Mit: none
Stano v. State 473 So.2d 1282 (Fla.1985)	DP	DP	Y	N	Affirmed Death Penalty	Agg: prior feloy; HAC; CCP; comm/ kidnap Mit: none
Wright v. State 473 So.2d 1277 (Fla.1985)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: avoid arrest; CCP; HAC; rape/ burglary Mit: none
Brown v. State 473 So.2d 1260 (Fla.1985)	Life	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: under sent/imprison; comm burglary/sexual battery; pecuniary gain; HAC; CCP; prior violent felony Mit: none
Trawick v. State 473 So.2d 1235 (Fla.1985)	DP	DP	N	N	Remanded for Resentencing Struck great risk; no remorse	Agg: great risk; no remorse; (comm/ robbery; pecuniary gain-merged)
Francis v. State 473 So.2d 672 (Fla.1985)	Life	DP	Y	Y	Affirmed Death Penalty	Agg: hinder law enforcement; HAC; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Rose v. State 472 So.2d 1155 (Fla.1985)	DP	DP	N	N	Affirmed Death Penalty	Agg: prior felony; under sent/ imprison; CCP Mit: none
Oats v. State 472 So.2d 1143 (Fla.1985)	DP	DP	N	N	Affirmed Death Penalty	Agg: CCP; avoid arrest; robbery; prior felony Mit: age
Bundy v. State 471 So.2d 9 (Fla.1985)	DP	DP	Y	Y	Affirmed Death Penalty Struck HAC	Agg: under sent/imprison; HAC, comm/kidnap; prior felony Mit: none
Brown v. State 471 So.2d 6 (Fla.1985)	DP	DP	X	X	New trial-trial errors	
Patten v. State 467 So.2d 975 (Fla.1985)	DP	DP	N	N	Remanded for New Sentencing Reversible error	Agg: prior violence; avoid arrest; CCP; Mit: none
Burr v. State 466 So.2d 1051 (Fla.1985)	Life	DP	N	O	Affirmed Death Penalty	Agg: comm/robbery; avoid arrest; CCP Mit: none
Medina v. State 466 So.2d 1046 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: pecuniary gain; HAC Mit: none
Johnson v. State 465 So.2d 499 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP; avoid arrest Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Caruthers v. State 465 So.2d 496 (Fla.1985)	DP	DP	N	N	Vacated Death Penalty Struck 2 agg's	Agg: CCP; avoid arrest; comm/robbery Mit: no significant history
Bates v. State 465 So.2d 490 (Fla.1985)	DP	DP	N	N	Vacated Death Penalty-Remand Struck CCP; avoid arrest	Agg: CCP; avoid arrest; comm/sexual battery/kidnap; pecuniary gain Mit: some nonstatutory mitigation
Jackson v. State 464 So.2d 1181 (Fla.1985)	DP	DP	N	N	Reversed/Remanded reversible error	
Lara v. State 464 So.2d 1173 (Fla.1985)	DP	DP	N	O	Affirmed Death Penalty	Agg: CCP; prior felony; hinder law enforc. Mit: none
Koon v. State 463 So.2d 201 (Fla.1985)	DP	DP	N	N	New trial-reversible error	
Henderson v. State 463 So.2d 196 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP; prior felony Mit: none
Randolph v. State 463 So.2d 186 (Fla.1984)	DP	DP	Y	N	Resentencing STRUCK HAC (robbery; pecuniary gain-merged)	Agg: comm/robbery; HAC; pecuniary gain; Mit: age; drug use

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Mills v. State 462 So.2d 1075 (Fla.1985)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP; sent/imprison; comm/kidnap; pecuniary gain Mit: none
Duest v. State 462 So.2d 446 (Fla.1985)	DP	DP	Y	Y	Affirmed Death Penalty (Ct. found comm/robbery; pecuniary gain-merged)	Agg: CCP; HAC; prior felony; comm/robbery; pecuniary gain Mit: none
Troedel v. State 462 So.2d 392 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty Struck comm/burglary/robbery	Agg: comm/burglary/robbery; HAC; CCP Mit: none
Bush v. State 461 So.2d 936 (Fla.1984)	DP	DP	N	O	Affirmed Death Penalty	Agg: comm/kidnap/robbery Mit: none
Rose v. State 461 So.2d 84 (Fla.1984)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; sent/imprison; kidnap Mit: none
Hardwick v. State 461 So.2d 79 (Fla.1984)	DP	DP	N	Y	Affirmed Death Penalty Struck CCP	Agg: comm/felony; CCP; prior felony; pecuniary gain Mit: none
Davis v. State 461 So.2d 67 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty Struck avoid arrest	Agg: HAC; CCP; prior felony; sent/imprison; avoid arrest; comm/burglary Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Stano v. State 460 So.2d 890 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/kidnap; CCP; HAC Mit: difficult childhood; marital problems; confessions; guilty pleas
Doyle v. State 460 So.2d 353 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty Struck avoid arrest	Agg: comm/sexual battery; HAC; avoid arrest Mit: none
Rivers v. State 458 So.2d 762 (Fla.1984)	Life	DP	N	N	Remanded for Life Struck avoid arrest	Agg: avoid arrest; great risk; pecuniary gain Mit: no significant history
Eutzy v. State 458 So.2d 755 (Fla.1984)	Life	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; robbery	Agg: robbery; prior felony; avoid arrest; HAC; pecuniary gain; CCP Mit: none
Livingston v. State 458 So.2d 235 (Fla.1984)	X	DP	X	X	New trial	
Groover v. State 458 So.2d 226 (Fla.1984)	Life	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; kidnapping; HAC; CCP Mit: none
Copeland v. State 457 So.2d 1012 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; comm/kidnap/rape; pecuniary gain; prior felony; avoid arrest Mit: age

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Lemon v. State 456 So.2d 885 (Fla.1984)	Life	DP	Y	O	Affirmed Death Penalty	Agg: HAC; prior felony Mit: acute emotional disturbance
Thomas v. State 456 So.2d 454 (Fla.1984)	Life	DP	Y	O	Affirmed Death Penalty	Agg: CCP; prior felony; HAC; eliminate witness Mit: none
Thompson v. State 456 So.2d 444 (Fla.1984)	Life	DP	X	N	Vacated for Life Struck CCP; Ct found: mental retardation; personality disorder)	Agg: CCP; avoid arrest; prior felony Mit: none
Parker v. State 456 So.2d 436 (Fla.1984)	DP	DP	N	O	Affirmed Death Penalty	Agg: CCP; sent/imprison; prior felony flight/sexual battery; pecuniary gain Mit: none
Kennedy v. State 455 So.2d 354 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; CCP hinder law enforc; avoid arrest-merged)	Agg: HAC; avoid arrest; sent/imprison; comm/felony; CCP; prior felony; hinder law enforcement Mit: one
Bundy v. State 455 So.2d 330 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: comm/burglary; sent/imprison; HAC; prior felony Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Gorham v. State 454 So.2d 556 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; CCP	Agg: sent/imprison; HAC; CCP; comm/felony Mit: none
Jennings v. State 453 So.2d 1109 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: kidnap/rape/burglary; CCP Mit: none
James v. State 453 So.2d 786 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: HAC; CCP; prior felony; avoid arrest burglary/robbery Mit: none
Mann v. State 453 So.2d 784 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; kidnap; HAC Mit: emotional disturbance
Morgan v. State 453 So.2d 394 (Fla.1984)	X	DP	X	X	New trial	
Brumbley v. State 453 So.2d 381 (Fla.1984)	DP	DP	X	X	Death Penalty Vacated; Resentencing without jury on whether death eligible under *Enmund v. Florida*, 458 U.S. 782 (1982)	
Card v. State 453 So.2d 17 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: CCP; avoid arrest; pecuniary gain; comm/kidnap/robbery; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Atkins v. State 452 So.2d 529 (Fla.1984)	DP	DP	X	X	Resentencing with jury	
Blanco v. State 452 So.2d 520 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; CCP	Agg: premed; burglary/pecuniary; HAC; CCP Mit: none
Gurganus v. State 451 So.2d 817 (Fla.1984)	DP	DP	X	X	New Trial	
Jackson v. State 451 So.2d 458 (Fla.1984)	DP	DP	Y	N	New Trial STRUCK HAC	Agg: HAC Mit: none
Squires v. State 450 So.2d 208 (Fla.1984)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; escapee; HAC; CCP Mit: none
Bassett v. State 449 So.2d 803 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty Struck great risk	Agg: prior felony; HAC; robbery/kidnap; great risk Mit: none
Jones v. State 449 So.2d 253 (Fla.1984)	DP	DP	N	O	Affirmed Death Penalty	Agg: pecuniary gain; robbery/burglary Mit: none
Heiney v. State 447 So.2d 210 (Fla.1984)	Life	DP	Y	O	Affirmed Death Penalty	Agg: HAC; robbery; sent/imprison Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Herring v. State 446 So.2d 1049 (Fla.1984)	DP	DP	N	O	Affirmed Death Penalty	Agg: CCP; avoid arrest; prior felony; Mit: age; difficult childhood; learning disabilities
Lusk v. State 446 So.2d 1038 (Fla.1984)	Life	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; great risk	Agg: HAC; great risk; prior felony; sent/imprison Mit: none
White v. State 446 So.2d 1031 (Fla.1984)	DP	DP	N	Y	Affirmed Death Penalty Struck CCP robbery; pecuniary gain-merged)	Agg: CCP; prior felony; robbery; pecuniary gain Mit: none
Oats v. State 446 So.2d 90 (Fla.1984)	DP	DP	Y	N	New Sentencing; STRUCK HAC; (Ct. found (pecuniary gain robbery-merged)	Agg: HAC; CCP; avoid arrest; pecuniary gain; robbery Mit: age
Rembert v. State 445 So.2d 337 (Fla.1984)	Life	DP	Y	N	Vacated for Life; STRUCK HAC; CCP; avoid arrest	Agg: comm/felony; CCP; HAC; avoid arrest Mit: none
Agan v. State 445 So.2d 326 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: sent/imprison; prior felony Mit: none
Preston v. State 444 So.2d 939 (Fla.1984)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: prior felony; robbery; HAC; CCP Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Sims v. State 444 So.2d 922 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty (Ct. found avoid arrest; hinder law enforcement-merged)	Agg: prior felony; great risk; HAC; flight; pecuniary gain; avoid arrest; hinder law enforc. Mit: none
Clark v. State 443 So.2d 973 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: prior felony; burglary/robbery; avoid arrest; HAC; CCP Mit: none
Maxwell v. State 443 So.2d 967 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; CCP robbery; pecuniary gain-merged)	Agg: prior felony; HAC; CCP; robbery; pecuniary gain Mit: none
Bottoson v. State 443 So.2d 962 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; comm/felony; HAC; avoid arrest Mit: none
Andrews v. State 443 So.2d 78 (Fla.1983)	X	DP	X	X	Vacated-New Trial	
Peavy v. State 442 So.2d 200 (Fla.1983)	DP	DP	Y	N	Resentencing Struck CCP	Agg: CCP; HAC; prior convict; comm/felony Mit: age; no significant history
Johnson v. State 442 So.2d 193 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: CCP; avoid arrest; robbery/pecuniary; sent/imprison; prior felony Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Johnson v. State 442 So.2d 185 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; robbery/pecuniary; avoid arrest Mit: none
Chandler v. State 442 So.2d 171 (Fla.1983)	DP	DP	X	N	Vacated Death Penalty Witherspoon violation	
Livingston v. State 441 So.2d 1083 (Fla.1983)	DP	DP	X	X	New Trial	
Drake v. State 441 So.2d 1079 (Fla.1983)	DP	DP	X	X	New Trial	
Pope v. State 441 So.2d 1073 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty Struck lack of remorse	Agg: prior felony; avoid arrest; HAC; CCP Mit: none
Perri v. State 441 So.2d 606 (Fla.1983)	DP	DP	X	X	New Sentencing needs psychiatric exam	
Routly v. State 440 So.2d 1257 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: robbery/burglary/kidnap; avoid arrest; HAC; CCP; pecuniary gain Mit: none
Delap v. State 440 So.2d 1242 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; prior felony; great risk; kidnap/robbery/rape; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Jones v. State 440 So.2d 570 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; CCP; hinder law enforc. Mit: none
Herzog v. State 439 So.2d 1372 (Fla.1983)	Life	DP	Y	N	Vacated Death Penalty STRUCK HAC; CCP; avoid arrest	Agg: prior felony; HAC; avoid arrest; CCP Mit:
Teffeteller v. State 439 So.2d 840 (Fla.1983)	DP	DP	Y	N	Vacated Death Penalty; new sentencing with jury due to reversible error for not giving curative instruction	Agg: prior felony; sent/imprison; HAC; robbery Mit: none
Engle v. State 438 So.2d 803 (Fla.1983)	Life	DP	X	X	Vacated Death Penalty; new sentencing based on Bruton problem	
Harris v. State 438 So.2d 787 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: HAC; CCP; prior sent; robbery/burglary; prior felony Mit: none
Williams v. State 438 So.2d 781 (Fla.1983)	DP	DP	N	Y	Affirmed Death Penalty	Agg: sent/imprison; prior felony Mit: none
Johnson v. State 438 So.2d 774 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: great risk; CCP; pecuniary gain; avoid arrest; felony murder Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Lightbourne v. State 438 So.2d 380 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: burglary/sexual battery; HAC; avoid arrest; pecuniary gain Mit: none
Mason v. State 438 So.2d 374 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty Struck great risk	Agg: CCP; great risk; HAC; prior felony Mit: none
Justus v. State 438 So.2d 358 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: robbery/kidnap/sexual battery; CCP Mit: none
Richardson v. State 437 So.2d 1091 (Fla.1983)	Life	DP	N	N	Vacate to Life Struck CCP	Agg: 6 factors Mit: none
Huff v. State 437 So.2d 1087 (Fla.1983)	X	DP	X	X	New trial-trial errors	
Harich v. State 437 So.2d 1082 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sexual battery; avoid arrest; HAC; CCP Mit: no significant history
Fitzpatrick v. State 437 So.2d 1072 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: kidnap; prior felony; sent/imprison; avoid arrest; pecuniary gain; great risk Mit: none
Michael v. State 437 So.2d 138 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: pecuniary gain; CCP; HAC Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Williams v. State 437 So.2d 133 (Fla.1983)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; sent/imprison Mit: none
Wilson v. State 436 So.2d 908 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: CCP; HAC; prior felony Mit: none
Foster v. State 436 So.2d 56 (Fla.1980)	DP	DP	N	N	Vacated Death Penalty Resentencing Struck 2 Agg's	Agg: robbery; avoid arrest; hinder law enforc. Mit: no significant history; age
King v. State 436 So.2d 50 (Fla.1983)	DP	DP	Y	Y	Affirmed Death Penalty Struck CCP	Agg: HAC; CCP Mit: none
Hawkins v. State 436 So.2d 44 (Fla.1983)	Life	DP	O	N	Vacate Death Penalty Override Sentenced to Life	
Spaziano v. State 433 So.2d 508 (Fla.1983)	Life	DP	Y	O	Affirmed Death Penalty	Agg: HAC; prior felony Mit: none
Webb v. State 433 So.2d 496 (Fla.1983)	Life	DP	X	N	Vacate Death Penalty Override Sentenced to Life	
Washington v. State 432 So.2d 44 (Fla.1983)	Life	DP	N	O	Vacated DP Override Remanded to Life	Agg: CCP; avoid arrest; hinder law enforc. Mit: no significant history; age

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
O'Callaghan v. State 429 So.2d 691 (Fla.1983)	DP	DP	N	Y	Affirmed Death Penalty	Agg: CCP; prior felony Mit: none
Norris v. State 429 So.2d 688 (Fla.1983)	Life	DP	N	N	Vacated DP Override Sentenced to Life	Agg: burglary; pecuniary Mit: age; drug problems; intoxication
Magill v. State 429 So.2d 649 (Fla.1980)	DP	DP	Y	O	Affirmd Death Penalty	Agg: 4 Mit: 3
Waterhouse v. State 429 So.2d 301 (Fla.1983)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; sent/imprison; sexual battery; avoid arrest; HAC Mit: none
Porter v. State 429 So.2d 293 (Fla.1983)	DP	DP	Y		Affirmed Death Penalty Override	Agg: robbery/pecuniary; avoid arrest; HAC Mit: none
Cannady v. State 427 So.2d 723 (Fla.1982)	Life	DP	N	N	Vacated Override; Sentenced to Life; S truck CCP	Agg: kidnap; pecuniary; CCP Mit: none
Middleton v. State 426 So.2d 548 (Fla.1982)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: prior felony; sent/imprison; pecuniary gain; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Rose v. State 425 So.2d 521 (Fla.1982)	DP	DP	X	Y	Vacated Override; Resentencing due to jury instruction; Remand for new sentence as to meaning; 6-6 tie	
Smith v. State 424 So.2d 726 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP; avoid arrest; robbery/pecuniary; kidnap/sexual battery; prior felony Mit: age
Bolander v. State 422 So.2d 833 (Fla.1982)	Life	DP	Y	Y	Affirmed Death Penalty Struck under sentence; great risk	Agg: robbery/kidnap; great risk; HAC; pecuniary gain; CCP; avoid arrest; hinder law enforc.; under sentence Mit: none
Hill v. State 422 So.2d 816 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; CCP Mit: none
McCampbell v. State 421 So.2d 1072 (Fla.1982)	Life	DP	N	N	Vacate Override Sentenced to Life	Agg: sent/imprison; prior felony; robbery Mit: none
Stewart v. State 420 So.2d 862 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; prior felony; HAC; pecuniary gain; felony murder Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Scott v. State 420 So.2d 595 (Fla.1982)	DP	DP	X	X	Vacated-Competency Hearing	
Martin v. State 420 So.2d 583 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: kidnap; avoid arrest; HAC; prior felony; sent/imprison Mit: none
Mann v. State 420 So.2d 579 (Fla.1982)	DP	DP	Y	N	Vacated Death Sentence; Remanded for resentencing due to unclear ct. order; STRUCK HAC	Agg: prior convict; comm/felony; HAC; CCP Mit: possible mental mitigation
Anderson v. State 420 So.2d 574 (Fla.1982)	DP	DP	X	O	Vacated-New Trial	
Daugherty v. State 419 So.2d 1067 (Fla.1982)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; pecuniary gain Mit: none
Stevens v. State 419 So.2d 1058 (Fla.1982)	Life	DP	Y	O	Affirmed Death Penalty Override	Agg: HAC; pecuniary gain; avoid arrest; kidnap/sexual battery Mit: none
Simmons v. State 419 So.2d 316 (Fla.1982)	DP	DP	Y	N	New Sentencing Struck pecuniary gain	Agg: pecuniary gain; HAC; prior felony Mit: none
Sturdivan v. State 419 So.2d 300 (Fla.1982)	DP	DP	X	X	New trial	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Walsh v. State 418 So.2d 1000 (Fla.1982)	Life	DP	N	N	Vacated Override Remand to Life	Agg: prior felony; CCP; avoid arrest Mit: none
Gilvin v. State 418 So.2d 996 (Fla.1982)	Life	DP	X	X	Vacated Override Reverse to Life	
Moody v. State 418 So.2d 989 (Fla.1982)	DP	DP	Y	N	Vacated Sentence; Remanded for new sentence without jury; Struck arson/flight	Agg: arson/flight; pecuniary gain; HAC Mit: no significant history
Simpson v. State 418 So.2d 984 (Fla.1982)			DP	X	X	New trial
Coler v. State 418 So.2d 238 (Fla.1982)			DP	X	X	New trial
Ferguson v. State 417 So.2d 639 (Fla.1982)	DP	DP	Y	N	Vacated Struck 2 agg's	Agg: great risk; sent/imprison; prior felony; HAC; avoid arrest; robbery Mit: none
Ferguson v. State 417 So.2d 631 (Fla.1982)	DP	DP	Y	N	Remand for Approp. Sentence Struck sent/imprison	Agg: HAC; prior felony; sent/imprison Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Jaramillo v. State 417 So.2d 257 (Fla.1982)	DP	DP	X	X	Remand to trial court to discharge; Insufficient evid. to support conviction	
McCray v. State 416 So.2d 804 (Fla.1982)	Life	DP	Y	N	Resentence to Life STRUCK HAC; CCP; pecuniary gain	Agg: HAC; CCP; pecuniary gain Mit: none
Miller v. State 415 So.2d 1262 (Fla.1982)	Life	DP		N	Affirmed Death Penalty	Agg: cited codefendant case for agg's *Jent v. State*, 408 So.2d 1024 (Fla. 1981) Mit: none
White v. State 415 So.2d 719 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; kidnap; avoid arrest Mit: no significant history
Morgan v. State 415 So.2d 6 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; HAC; prior felony Mit: none
Griffin v. State 414 So.2d 1025 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; robbery; parole; prior felony Mit: none
Quince v. State 414 So.2d 185 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: rape, pecuniary gain; HAC Mit: substantial impairment

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Francis v. State 413 So.2d 1175 (Fla.1982)	X	DP	X	X	New trial	
Hitchcock v. State 413 So.2d 741 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; sexual battery Mit: age
Jennings v. State 413 So.2d 24 (Fla.1982)	X	DP	X	X	New trial	
Breedlove v. State 413 So.2d 1 (Fla.1982)	DP	DP	Y	N	Affirmed Death Penalty	Agg: burglary; HAC; prior felony Mit: none
Adams v. State 412 So.2d 850 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; rape/kidnap Mit: emotional disturb; no sign. history; age
Bryant v. State 412 So.2d 347 (Fla.1982)	DP	DP	X	X	New Trial	Agg: robbery
Steinhorst v. State 412 So.2d 332 (Fla.1982)	Life	DP	Y	O	Affirmed Death Penalty Override	Agg: HAC; kidnap Mit: no significant history
Scott v. State 411 So.2d 866 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: robbery/pecuniary; parole; prior felony; HAC Mit: none
Arango v. State 411 So.2d 172 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Jones v. State 411 So.2d 165 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; prior felony; robbery; HAC; hinder law enforcement Mit: none
Vaught v. State 410 So.2d 147 (Fla.1982)	DP	DP	Y	O	Affirmed Death Penalty robbery; pecuniary gain-merged)	Agg: robbery; pecuniary; avoid arrest; HAC Mit: age; no significant history
Jent v. State 408 So.2d 1024 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: CCP; HAC Mit: none
Smith v. State 407 So.2d 894 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: hinder law enforc; HAC Mit: none
Francois v. State 407 So.2d 885 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty Struck great risk FSC: improper doubling	Agg: HAC; prior felony; great risk; robbery; pecuniary gain; avoid arrest; hinder law enforcement Mit: none
Christopher v. State 407 So.2d 198 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; HAC Mit: none
Blair v. State 406 So.2d 1103 (Fla.1981)	DP	DP	N	N	Death Penalty Vacated; Remand to Life; Struck great risk	Agg: great risk; avoid arrest Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Goodwin v. State 405 So.2d 170 (Fla.1981)	Life	DP	N	X	Vacated Override Remand to Life	
Hall v. State 403 So.2d 1321 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; prior felony; kidnap/robbery Mit: none
Hall v. State 403 So.2d 1319 (Fla.1981)	X	DP	X	X	Remand to 2nd degree murder conviction	
(a/k/a Gordon) Franklin v. State 403 So.2d 975 (Fla.1981)	X	DP	X	X	New trial	
Buford v. State 403 So.2d 943 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sexual battery; HAC Mit: age
McKennon v. State 403 So.2d 389 (Fla.1981)	Life	DP	Y	N	Vacated Override Reduced to Life	Agg: HAC Mit: age
Stokes v. State 403 So.2d 377 (Fla.1981)	Life	DP	Y	N	Vacated Override Resentencing to Life	Agg: robbery; kidnap; HAC Mit: no significant history
Thomas v. State 403 So.2d 371 (Fla.1981)	X	DP	X	X	New trial	

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Odom v. State 403 So.2d 936 (Fla.1981)	Life	DP	N	X	Vacated Override; Resentenced to Life; Ct. held: State failed to establish any aggravating factors	Agg: none
Smith v. State 403 So.2d 933 (Fla.1981)	Life	DP	N	N	Vacated Override Remand to Life	
Combs v. State 403 So.2d 418 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; robbery; CCP Mit: none
Tafero v. State 403 So.2d 355 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; great risk	Agg: great risk; parole violation; prior felony; avoid arrest; robbery; HAC; hinder law enforcement Mit: none
White v. State 403 So.2d 331 (Fla.1981)	Life	DP	Y	Y	Override Affirmed Death Penalty Struck great risk; avoid arrest-pecuniary gain	Agg: robbery; HAC; prior felony; great risk; sent/imprison; avoid arrest; hinder law enforcement Mit: none
Welty v. State 402 So.2d 1159 (Fla.1981)	Life	DP	N	N	Vacated Override Resentence to Life Doubling struck burglary and pecuniary gain	Agg: burglary; pecuniary gain; great risk Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Barfield v. State 402 So.2d 377 (Fla.1981)	Life	DP	N	N	Vacated Override Remand for Life	Agg: pecuniary gain Mit: none
Zeigler v. State 402 So.2d 365 (Fla.1981)	Life	DP	Y	Y	Affirmed DP Override STRUCK HAC	Agg: HAC; pecuniary gain; great risk; avoid arrest Mit: no significant history
Drake v. State 400 So.2d 1217 (Fla.1981)	X	DP	X	X	New Trial	
Porter v. State 400 So.2d 5 (Fla.1981)	Life	DP	N	N	New Sentencing	Agg: robbery/pecuniary gain; avoid arrest Mit:
Enmund v. State 399 So.2d 1362 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: robbery/pecuniary; prior felony; HAC Mit: none
Maggard v. State 399 So.2d 973 (Fla.1981)	DP	DP	Y	N	Vacated Death Penalty; new sentencing with jury; STRUCK HAC; (Ct. found burglary; pecuniary gain-merged)	Agg: burglary; pecuniary gain; HAC Mit: none
Sireci v. State 399 So.2d 964 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: HAC; avoid arrest; robbery Mit: none
Armstrong v. State 399 So.2d 953 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: HAC; robbery; pecuniary Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Lewis v. State 398 So.2d 432 (Fla.1981)	Life	DP	Y	N	Vacated DP Override; new sentence with jury for reconsideration of sentence; STRUCK HAC; great risk; prior felony	Agg: sent/imprison; HAC; great risk; prior felony Mit: none
Booker v. State 397 So.2d 910 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; prior felony; sexual battery; avoid arrest; HAC Mit: none
Straight v. State 397 So.2d 903 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: sent/imprison; flight; robbery; HAC Mit: none
Palmes v. State 397 So.2d 648 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; robbery; pecuniary gain; HAC Mit: none
Ruffin v. State 397 So.2d 277 (Fla.1981)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior capital felony; robbery; HAC Mit: none
Jacobs v. State 396 So.2d 1113 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty (Ct. found robbery; pecuniary gain-merged)	Agg: robbery; pecuniary gain; avoid arrest; HAC Mit: no significant history

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Jacobs v. State 396 So.2d 713 (Fla.1981)	Life	DP	N	N	Vacated Override; Resentence to Life; Struck great risk	Agg: great risk; avoid arrest; hinder law enforcement Mit: none
McCrae v. State 395 So.2d 1145 (Fla.1980)	Life	DP	Y	N	Affirmed DP Override	Agg: prior felony; rape; HAC Mit: none
Demps v. State 395 So.2d 501 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC; avoid arrest	Agg: HAC; avoid arrest; prior felony; prior capital convict. Mit: none
Peek v. State 395 So.2d 492 (Fla.1981)	DP	DP	Y	Y	Affirmed Death Penalty Struck pecuniary gain;	Agg: pecuniary gain; HAC; prior felony; sexual battery under probation Mit: none
Perry v. State 395 So.2d 170 (Fla.1980)	X	DP	N	N	Vacated Death Penalty; new sentencing with jury because ct. may have limited consideration of mitigation (Ct. found pecuniary gain; robbery-merged)	Agg: pecuniary gain; robbery; prior felony Mit: none
Spaziano v. State 393 So.2d 1119 (Fla.1981)	Life	DP	Y	N	Resentencing Vacated D.P.	Agg: HAC; prior felony Mit: none
Johnson v. State 393 So.2d 1069 (Fla.1980)	Life	DP	Y	Y	Affirmed Death Penalty Struck great risk	Agg: great risk; prior felony; kidnap;HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Malone v. State 390 So.2d 338 (Fla.1980)	DP	DP	X	X	Reversed and Remanded based on U.S. v. Henry, 477 U.S. 264 (1980)	
Mines v. State 390 So.2d 332 (Fla.1980)	Waived Jury	DP	Y	N	Vacated Death Penalty Resentencing without jury Struck great risk	Agg: great risk; kidnap; HAC Mit: no significant history
King v. State 390 So.2d 315 (Fla.1980)	DP	DP	Y	O	Affirmed Death Penalty	Agg: prior felony; sent/imprison; arson/great risk; burglary; HAC; separate stabbing Mit: age
Phippen v. State 389 So.2d 991 (Fla.1980)	Life	DP	Y	N	Vacated Override Life Sentence Imposed Struck pecuniary gain	Agg: pecuniary gain; HAC Mit: none
Thompson v. State 389 So.2d 197 (Fla.1980)	DP	DP	Y	O	Affirmed Death Penalty	Agg: kidnap; sexual battery; HAC Mit: no significant history; age
Gafford v. State 387 So.2d 333 (Fla.1980)	DP	DP	Y	N	Resentencing Improper doubling	Agg: HAC; robbery; pecuniary Mit: no significant history; age

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Ross v. State 386 So.2d 1191 (Fla.1980)	DP	DP	Y	N	Vacated Death Penalty; Remand for reconsideration because ct. gave undue weight to jury's recommendation; Struck pecuniary gain; comm/robbery	Agg: HAC; avoid arrest; robbery; pecuniary gain Mit: age; limited intelligence
Magill v. State 386 So.2d 1188 (Fla.1980)	DP	DP	N	O	Resentencing-no written findings without jury	
Downs v. State 386 So.2d 788 (Fla.1980)	DP	DP	N	N	Affirmed Death Penalty	Agg: pecuniary gain; prior felony Mit: none
Williams v. State 386 So.2d 538 (Fla.1980)	Life	DP	Y	Y	Resentenced to Life STRUCK HAC; great risk; prior felony	Agg: prior felony; great risk; HAC; hinder law enforcement Mit: none
Shriner v. State 386 So.2d 525 (Fla.1980)	DP	DP	N	O	Affirmed Death Penalty	Agg: prior felony; comm/robbery Mit: possible mit: capacity to appreciate actions
Neary v. State 384 So.2d 881 (Fla.1980)	Life	DP	N	O	Vacated DP Override; Remand for Life Sentence; (Ct. found: age; slow learner; family situation	Agg: comm/burglary; pecuniary gain; avoid arrest; HAC Mit: none

NAME	JURY-RECOM	JUDGE	HAC	HARMLESS	FSC	SENTENCING FACTORS
Antone v. State 382 So.2d 1205 (Fla.1980)	DP	DP	Y	Y	Affirmed Death Penalty STRUCK HAC	Agg: prior felonies; pecuniary gain; HAC Mit: none
Brown v. State 381 So.2d 690 (Fla.1980)	DP	DP	N	O	Affirmed Death Penalty Struck great risk; Improper doubling	Agg: great risk; comm/felony/rape/robbery; pecuniary gain Mit: none